

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

<p style="text-align: center;">UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN</p> <hr/> <p>ALVIN BALDUS, CINDY BARBERA, CARLENE BECHEN, RONALD BIENDSEIL, RON BOONE, VERA BOONE, ELVIRA BUMPUS, EVANJELINA CLEEREMAN, SHEILA COCHRAN, LESLIE W. DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD KRESBACH, RICHARD LANGE, GLADYS MANZANET, ROCHELLE MOORE, AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP, and TRAVIS THYSSEN,</p> <p style="text-align: center;">Plaintiffs,</p> <p>TAMMY BALDWIN, GWENDOLYNNE MOORE, and RONALD KIND,</p> <p style="text-align: center;">Intervenor-Plaintiffs,</p> <p style="text-align: center;">v. File No. 11-CV-562</p> <p>Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE,</p> <hr/> <p style="text-align: center;">[Caption Continued]</p> <p style="text-align: center;">VIDEOTAPE DEPOSITION</p> <p style="text-align: center;">PETER W. BARCA - VOLUME II</p> <p style="text-align: center;">Madison, Wisconsin February 7, 2012</p> <p style="text-align: center;">Sarah Finley Pelletter, RPR Registered Professional Reporter</p>	<p style="text-align: center;">I N D E X</p> <p>2 <u>Witness</u> <u>Pages</u></p> <p>3 PETER W. BARCA</p> <p>4 Examination by Mr. Kelly 144</p> <p>5</p> <p>6 <u>E X H I B I T S</u></p> <p>7 <u>No.</u> <u>Description</u> <u>Identified</u></p> <p>8 1049 E-mail dated 12/13/10 from 144 Steve Miller</p> <p>9 1050 E-mail dated 1/12/11 from 152 Steve Miller attaching RSWG meeting notice and agenda</p> <p>10 1051 E-mails dated 3/15/11 between 158 Matt Egerer, Rich Judge, and Cathy Friedl</p> <p>11 1052 E-mails dated 3/15/11 between 167 Matt Egerer, Rich Judge, and Cathy Friedl</p> <p>12 1053 E-mail dated 7/1/11 to Peter Barca 173 from Rich Judge</p> <p>13 1054 E-mails dated 7/15/11 between 198 Matt Egerer and Adrienne Ramirez</p> <p>14 1055 Senate Bill 148 and legislative 203 history, Assembly Substitute Amendment 1 to 2011 Senate Bill 148</p> <p>15 1056 Senate Bill 149 and legislative 205 history, Assembly Substitute Amendment 1 to 2011 Senate Bill 149</p> <p>16</p> <p>17 (The original exhibits were attached to the original 141 transcript and copies were provided to counsel)</p> <p>18 (The original deposition transcript was filed with 141 Attorney Daniel Kelly)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,</p> <p style="text-align: center;">Defendants,</p> <p>F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,</p> <p style="text-align: center;">Intervenor-Defendants.</p> <hr/> <p>VOCES DE LA FRONTERA, INC., RAMIRO VARA, OLGA VARA, JOSE PEREZ, and ERICA RAMIREZ,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v. Case No. 11-CV-1011 JPS-DPW-RMD</p> <p>Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,</p> <p style="text-align: center;">Defendants.</p> <hr/>	<p>1 VIDEOTAPE DEPOSITION of PETER W. BARCA - VOLUME II,</p> <p>2 a witness of lawful age, taken on behalf of the</p> <p>3 Plaintiffs, wherein Alvin Baldus, et al., are</p> <p>4 Plaintiffs, and Members of the Wisconsin Government</p> <p>5 Accountability Board, et al., are Plaintiffs, pending</p> <p>6 in the United States District Court for the</p> <p>7 Eastern District of Wisconsin, pursuant to</p> <p>8 stipulation, before Sarah Finley Pelletter, a</p> <p>9 Registered Professional Reporter and Notary Public in</p> <p>10 and for the State of Wisconsin, at the offices of</p> <p>11 Godfrey & Kahn, S.C., Attorneys at Law, One East Main</p> <p>12 Street, in the City of Madison, County of Dane, and</p> <p>13 State of Wisconsin, on the 7th day of February 2012,</p> <p>14 commencing at 1:20 in the afternoon.</p> <p>15</p> <p>16</p> <p>17 <u>A P P E A R A N C E S</u></p> <p>18</p> <p>19 DUSTIN B. BROWN, Attorney,</p> <p>20 for GODFREY & KAHN, S.C., Attorneys at Law,</p> <p>21 One East Main Street, Suite 500, Madison,</p> <p>22 Wisconsin 53703, appearing on behalf of</p> <p>23 Plaintiffs Alvin Baldus, et al.</p> <p>24</p> <p>25 JACQUELINE BOYNTON, Attorney at Law,</p> <p>2266 North Prospect Avenue, Suite 505, Milwaukee, Wisconsin 53202, appearing by telephone on behalf of Plaintiffs Voces De La Frontera, Inc., et al.</p>

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

A P P E A R A N C E S (Continued)

MARIA S. LAZAR, Assistant Attorney General,
for STATE OF WISCONSIN DEPARTMENT OF JUSTICE,
17 West Main Street, Madison, Wisconsin 53703,
appearing on behalf of the Defendants.

DANIEL KELLY, Attorney,
for REINHART BOERNER VAN DEUREN S.C.,
Attorneys at Law, 1000 North Water Street,
Suite 2100, Milwaukee, Wisconsin 53202,
appearing on behalf of the Defendants.

ROBERT J. JAMBOIS, Attorney,
for JAMBOIS LAW OFFICE, Attorneys at Law,
P.O. Box 620321, Middleton,
Wisconsin 53562-0321, appearing on behalf of
Peter W. Barca.

Also present: Matthew G. Egerer
James Porter, CDVS
Campbell Legal Video Company
417 Heather Lane, Suite B
Fredonia, WI 53021
(262) 447-2199

143

(Exhibit Nos. 1049 through 1056 marked for
identification)

EXAMINATION

By Mr. Kelly:

Q Good afternoon, Mr. Barca.

A Good afternoon.

Q Thank you. I appreciate you making room in what I
know is a hectic schedule. I will do my best to
take as little of it as I can.

A Terrific.

Q All right. Let's start with this. I'm going to
hand you what's been marked Exhibit 1049.

MR. KELLY: Yes. Just brought to
my attention, he's not been reminded he's
still under oath from the first deposition.
If someone might do that.

THE COURT REPORTER: Mr. Barca, I
would like to remind you that you are still
under oath.

THE WITNESS: Thank you very much.

Q I will take it as true your prior statement that
you would appreciate it that I'd take as little of
your time as possible.

A Yes. Thank you. Not that I don't thoroughly

144

enjoy all of your company.

Q Mr. Barca, have you ever seen what's been marked
as Exhibit 1049?

A Not to my recollection.

Q All right. I have some questions about the body
of the e-mail. Perhaps you can explain a little
bit of it to me. It says, the first line,
"Attached are the templates for the legislative
and congressional redistricting bills." Do you
see that?

A Yes, I do.

Q What is a template for a legislative and
congressional redistricting bill, do you know?

A I mean, offhand, I don't, to be frank, so. These
drafts are shells which do not contain
descriptions. I'm not completely certain what
they mean.

Q Do you know what a template is in the context of a
legislative bill?

A I mean, generally speaking, of course.

Q What would it be?

A I mean, I would say a template, typically in any
bill, would, you know, outline the bill number and
have a relating clause and list the authors of the
bill and so on and so forth. So I mean, obviously

145

I know the concept of a template. In terms of
this context though, I don't recall this document,
seeing it or being aware of it. So I'm not clear
if they mean a template in terms of -- of the bill
itself, I would assume. Because it says attached
are templates of the legislative and congressional
redistricting bills. So I don't know if it has
some boilerplate language that typically is used
or -- I'm not clear, to be frank.

Q The author of this exhibit appears to be
Steve Miller. Do you know who that is?

A Yes, I do.

Q Who is that?

A He's the head of the legislative drafting
bureau -- or Legislative Reference Bureau.

Q He says, continuing in the body of the e-mail, he
says, "They," meaning the template of the bills,
"also set out new language which requires
municipal governing authorities to conform ward
boundaries to the legislative and congressional
district plans in the event that the plans divide
a ward." Do you see that?

A Yes, I do.

Q Do you know what that means?

A Well, I assume what that means is that if they

146

1 were to -- I mean, its common definition would be
 2 if you divide a ward differently or subdivide a
 3 ward from what commonly would be utilized, this
 4 would be language you would insert to make it
 5 clear that you were dividing that ward, would be
 6 my sense of it.
 7 Q Now, would it be accurate to understand this
 8 language as saying that this provides for the
 9 creation of a legislative district map that might
 10 eventually divide a ward?
 11 A Well, I mean, I look at the -- I look at this, and
 12 again, a template is not a bill, so I'm not clear
 13 if they were -- if somebody -- I mean, it's not
 14 clear to me at all, even the derogation of this,
 15 if somebody had requested Steve Miller to produce
 16 some boilerplate language that they could use or
 17 where this came from, but actually, no, I wouldn't
 18 have thought, just reading this outright, I
 19 wouldn't have thought that they were creating, you
 20 know, completely new wards but that they might be
 21 dividing wards. So, I mean, my common sense of
 22 that would be that they would be looking at a
 23 ward, maybe dividing it somewhat differently, but,
 24 that would be my sense of it versus creating a
 25 whole new type of ward itself, but I mean, that's

147

1 just what would jump out at me at first blush.
 2 Q Let me see if I understand what you're saying. So
 3 your understanding of this language suggests that
 4 the plan that's ultimately adopted might divide a
 5 ward?
 6 A Well, no, let me be clearer.
 7 Q Go ahead.
 8 A Especially, because of the fact that it states our
 9 templates for the legislative and congressional
 10 redistricting bills, I mean, oftentimes
 11 legislators will be contemplating various options
 12 and you might ask for some templates in the event
 13 that you choose one course or another. So had I
 14 looked at this at this time, I might have thought,
 15 well, perhaps somebody is thinking about doing
 16 something a little bit differently than just
 17 taking the ward lines as drafted by a
 18 municipality. But, you know, that would be about
 19 it, and again, it would be contemplated, not that
 20 you were definitely going to do that, because this
 21 is, again, asking for a template, not asking for
 22 specific language, for a plan that's being put
 23 forward, and looking at the date in December of
 24 2010, I don't know anybody that was thinking of
 25 specific language.

148

1 Q I may have asked you this at the first part of
 2 your deposition, and if I did, I apologize for
 3 asking it again. What is your experience with
 4 redistricting, if any?
 5 A Well, I was in the legislature back in the
 6 Nineties when we drew that map, and I was not on
 7 the committee that drew it. I didn't follow it.
 8 I wasn't involved in any intricate manner, but
 9 obviously I followed it as a legislator and as
 10 someone that took an interest in what we were
 11 generally doing. But I don't consider myself an
 12 expert or even -- this would not be a policy issue
 13 that I really have ever spent a lot of time on.
 14 Q Do you know who asked Steve Miller to prepare a
 15 template of a legislative and congressional
 16 redistricting bill?
 17 A I have no idea.
 18 Q Did you --
 19 A I mean, perhaps it's -- I mean, you can see all
 20 these people listed, you have a diverse group, so
 21 I have no idea, you know, it would have been
 22 anybody on this list.
 23 Q At any time in 2010 or 2011, did you see a
 24 template for a legislative and congressional
 25 redistricting bill?

149

1 A Not that I recall.
 2 Q Is that typically the way one begins drafting a
 3 bill is with a template?
 4 A Well, depends on your definition of template. I
 5 mean, typically, if I was drafting a bill, I might
 6 go back to a bill that had been used in a previous
 7 session and utilize that as sort of a basis for
 8 how you would move forward versus a template. You
 9 know, I wouldn't, as commonly, in fact I can't
 10 think of any time I ever asked for a template, per
 11 se. Typically what I would say is let's see if
 12 there was a bill that had been drafted in the past
 13 that is close to what we're attempting to
 14 accomplish here.
 15 Q Let's say that the attachments to this e-mail,
 16 those templates, let's say it's true what
 17 Mr. Miller says, that they set out language which
 18 requires municipal governing authorities to
 19 conform ward boundaries to the legislative and
 20 congressional district plans in the event that the
 21 plans divide a ward. Let's say that it has that
 22 kind of language in it. Is that something that
 23 Mr. Miller would come up with himself or would he
 24 put that in there at someone's request?
 25 A I'm sorry, can you repeat? I'm not sure where

150

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

1 you're going with this.
2 Q Sure. Yeah.
3 A Would he have drafted this on his own volition,
4 like here are some templates in the event that you
5 want to go in this direction, or what?
6 Q Correct.
7 A I would think not. I mean, I would think that he
8 wouldn't do it on his own volition, but. But
9 typically, I mean, the only thing I would say is
10 that if, if there's been talk in various circles
11 about moving in one direction or another, I mean,
12 at times they do come up with language I think
13 might be helpful, but typically it would come from
14 a request.
15 Q And in particular, the language about what to do
16 in the event of a divided ward, would that
17 language have been inserted or drafted or
18 developed by Mr. Miller himself or would that have
19 been done at someone's request, do you think?
20 A I would think typically at someone's request.
21 Q At the beginning of the e-mail, it notes dated
22 December 13th, 2010; do you see that?
23 A Yes, I do.
24 Q At that time, who was the majority, which party
25 was in the majority in the assembly?

151

1 A December 13th. Well, the democrats had just lost
2 the election, but we were in the, democrats were
3 still the majority until January 5th of, you know,
4 three weeks later.
5 Q And in the senate, which party was in the
6 majority?
7 A It was the exact same situation.
8 Q Who was the governor at the time?
9 A Jim Doyle.
10 Q And he's a democrat?
11 A That's correct.
12 Q All right. Mr. Barca, I'm going to hand you
13 what's been marked Exhibit 1050. Please take a
14 moment and look at that and let me know if you've
15 ever seen that before.
16 (Witness examines document)
17 A I don't believe I've ever seen this.
18 Q Have you ever heard of the Redistricting Staff
19 Working Group?
20 A I am not -- I don't have any specific recollection
21 of that. I mean, I probably have heard reference
22 to staff working groups, I mean, that's quite
23 common, but. This one in particular, I can't -- I
24 don't have any recollection of this specific
25 group. I'm trying to look at who's on this group.

152

1 Looks like it's a bipartisan group of people, so.
2 I mean, I don't recall this specifically.
3 Q Did your staff ever tell you about any kind of a
4 working group that was addressing redistricting?
5 A Well, I mean, my recollection of what my staff
6 would have told me is that, you know, in terms of
7 discussing like LTSB and, you know, their role in
8 the redistricting and, you know, the equipment
9 that they were developing and software and things
10 of that sort, so, I mean, I recall discussions of
11 that specifically.
12 Q Do you recall discussions of a program called
13 AutoBound?
14 A Not that program specifically, but I know that
15 there were various programs that were being put
16 together.
17 Q Do you know if there were training opportunities
18 for those software programs that you were told
19 about?
20 A I don't know specifically. I mean, I never went
21 to any, but I would imagine. I know LTSB, though,
22 is generally available to train people for, you
23 know, virtually any program that's available on
24 our system.
25 Q This e-mail is dated, up at the top, do you see

153

1 where it says January 12, 2011? Do you see that?
2 A Yes, I do.
3 Q Had you been elected minority leader by that
4 point?
5 A Yes, I was.
6 Q Up to January 12, 2011, had you done anything to
7 acquaint yourself with the redistricting process?
8 A Well, only, I mean, what, really, my first as
9 minority leader awakening to this was, I think it
10 was the day after we were sworn in, when
11 Speaker Fitzgerald had called for a meeting of the
12 assembly org committee, and much to my surprise
13 when I arrived, he indicated that they had decided
14 to give themselves unlimited resources to hire
15 attorneys and consultants and that the democrats
16 would be given nothing, because if you can recall
17 from our previous testimony, we had put forward
18 the option that it be done through legislative
19 counsel so the public could have access to it. So
20 I was quite taken by that.
21 So during that period, in that very meeting,
22 we, you know, we had -- I think LTSB may have said
23 something about the process, and I think I had
24 some sense prior to that meeting of walking in
25 there, and this would have been like a ten-minute

154

1 overview just in terms of the timeline that
2 typically you would be expected to follow. So
3 that would have been, as up until that date, that
4 would have been my only work I would have done in
5 regard to redistricting specifically.
6 And then you're talking about, I guess that
7 was on the 4th, so this would have been eight days
8 later, I don't recall doing any additional work in
9 that eight-day period other than, you know, we
10 sent a letter to the speaker asking him to
11 reconsider and -- I don't recall doing anything
12 further other than that.
13 Q Did you direct anyone on your staff to find out
14 anything more about the redistricting process?
15 A Well, only that, you know, Matt Egerer is the
16 person in our office that does sort of our IT work
17 and is our, you know, person that's the liaison to
18 LTSB. And so, you know, it was commonly
19 understood that he would be the person talking to
20 them and understanding what was going on, and
21 Rich Judge, as our chief of staff, would have
22 given me the timeline that we expect to follow and
23 things of that sort, but -- you mean up until this
24 day of the 12th in particular or --
25 Q For now, yes.

155

1 A I mean, that would have been the extent of it. I
2 mean, that was only -- I think you're talking
3 eight days after we took office. I mean,
4 obviously the first week of session you're going
5 through all kinds of administrative details. You
6 have people sworn in, you have new members, you
7 have, you know, bills that were being introduced,
8 getting ready for a special session, things of
9 that sort.
10 Q Did you ever direct anyone, excuse me, on your
11 staff to attend any AutoBound training sessions?
12 A No, not that I recall. I mean, but it's not as if
13 I need to tell them every training to go to.
14 Typically it would be my chief of staff that would
15 make those kinds of decisions, who should go to
16 what kind of training session, and then they have
17 good judgment on their own, they kind of know what
18 they're supposed to be educated in to handle their
19 area of responsibility.
20 Q Did you have any discussions with your chief of
21 staff about redistricting issues?
22 A On -- you mean between these dates?
23 Q At any time.
24 A Well, of course. I mean, in between that date and
25 the 12th, obviously we discussed how to respond to

156

1 the republican's, you know, motion that they
2 passed to give themselves unlimited attorney
3 resources, and the fact that we would have no
4 resources at our disposal, I asked them
5 specifically to call up the Legislative Reference
6 Bureau and legislative counsel and to find out
7 whether or not they had attorneys on their staff
8 that were, you know, schooled in the area of
9 redistricting and what kind of support we could
10 expect to get, and to reach out to the republicans
11 to see if they would reconsider. That would have
12 been the thrust of what I would have focused most
13 of my energy on that first, you know, couple weeks
14 after we were surprised by this move.
15 Q Do you know if anyone on your staff ever did
16 attend any AutoBound training session?
17 A I assume that Matt Egerer would have attended some
18 session or another. He works very closely with
19 the LTSB, so I would be surprised if he didn't,
20 but I don't know specifically if he ever did
21 because I'm not even that familiar with this
22 particular program you're talking about. I don't
23 know if that's the only program, if there's other
24 software programs available. So I couldn't say
25 specifically.

157

1 Q Let's take a look at Exhibit 1051, which I'm
2 handing to you now.
3 A Okay, thank you.
4 Q Can you take a look at that and let me know if
5 you've seen that before?
6 (Witness examines document)
7 A I mean, I don't recall seeing this specific
8 e-mail.
9 Q Okay. Let's start with the e-mail -- the original
10 e-mail, which, as such things go, appears on the
11 lower part of Exhibit 1051. It's from Matt Egerer
12 to Rich Judge and Cathy Friedl; do you see that?
13 A Yes, I do.
14 Q Dated March 15, 2011?
15 A Yes.
16 Q The -- and Matt is indicating that Tony at LTSB
17 called to let -- well, I'll just read the
18 sentence. Tony (the head of GIS at LTSB) called
19 to let us know that the redistricting data will be
20 processed by tomorrow and they will be deploying
21 workstations to the GOP and Senator Miller. Do
22 you see that?
23 A Yes, I do.
24 Q And who is Senator Miller? Is he the minority
25 leader?

158

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

1 A Yes, he's the senate minority leader.
2 Q And the next paragraph says, "They need us to
3 decide what we are going to do with ours." Do you
4 see that?
5 A Yes, I do.
6 Q What do you understand that to mean?
7 A That they -- my understanding at the time was they
8 were giving one work unit to the assembly
9 democrats and the democrats and assembly senate,
10 you know, on both sides, republicans and the
11 democrats, the assembly and the senate.
12 Q And Senator Miller, being the senate minority
13 leader, he would decide what the senate democratic
14 caucus would do with theirs?
15 A Right.
16 Q Would it also be true then that as assembly
17 minority leader, that you would decide what to do
18 with the workstation allocated to the assembly
19 democrats?
20 A That's correct.
21 Q What did you decide to do with it?
22 A We decided to have them located in
23 Representative Kessler's office.
24 Q Why is that?
25 A Well, just because Fred Kessler has the most

159

1 knowledge of the redistricting process, the people
2 on our caucus, and he also has the most skill and,
3 you know, being able to understand the intricacies
4 involved in trying that.
5 Q And did you give him any instructions with respect
6 to what to do with the workstation?
7 A You mean Representative Kessler?
8 Q Uh-huh.
9 A Only that, my initial instruction was just that he
10 should not be trying to draw some maps because
11 there was considerable concern on some of the
12 parts of members of our caucus that there be input
13 from all members before maps be drawn, and there
14 was some concern about Representative Kessler
15 drawing them because they were worried that he
16 would be -- he might do something unfavorable to
17 them specifically.
18 Q To whom?
19 A To the other members of the caucus. Like
20 different members of the caucus had approached me
21 and said, you know, that I -- we hope that we
22 would be cautious and that, you know, we would
23 have an open process if we were going to draw maps
24 so that people could have input and things of that
25 sort.

160

1 Q And why would people think that Mr. Kessler would
2 do something unfavorable to them?
3 A Well, in the legislature, you know, different
4 people have relationships with one another, and
5 some people get along better than others, and, you
6 know, some people might have some concern that
7 somebody might draw a map that might adversely
8 affect somebody if you're trying to draw a
9 judgment between whether drawing a line on one
10 street or another street, so. So some people had
11 some concerns in that regard.
12 Q Some concerns that Mr. Kessler might draw,
13 intentionally draw a district that would be
14 unfavorable to another member?
15 A Maybe less favorable than what they would like to
16 see. And it's just that they wanted to have input
17 into the process, of course. They wanted it to be
18 an open process and transparent process, that they
19 would have help, and they also wanted to make sure
20 that it was done properly and constitutionally so
21 that if we were going to have an alternative map,
22 that it would be one that, you know, would stand
23 for challenges and would be a credible map.
24 Q And what kind of input would the other members
25 want to have?

161

1 A Well, they would want to understand the legal
2 implications of what we were drawing and have some
3 input into, you know, how community of interests
4 are pulled together, for instance. That would be
5 one of the key factors.
6 Q They would want know how the map affected them?
7 A How it would affect them too, sure. How it would
8 affect their district and people they represent.
9 Q And their ability to be re-elected?
10 A I'm sure that would come across some people's
11 minds, yes.
12 Q Some people's minds in the democratic caucus?
13 A In any caucus, yes.
14 Q Is that illegitimate for members to be concerned
15 about what the districts might do to them and
16 their abilities to be re-elected?
17 A I don't think it's illegitimate to be concerned
18 with that. I would hope the members would be more
19 worried about the constituents they represent and
20 holding together community of interest than they
21 would be about, you know, how the maps
22 specifically affect them, but each member, you
23 know, brings to bear their own set of criteria
24 what they think is important.
25 Q So how many meetings did you have for members of

162

1 the Assembly Democratic Caucus to have input into
2 a prospective map?
3 A I would say there -- well, it depends on how
4 narrowly you define that, because if it was in to
5 drawing a prospective map, specifically there were
6 no meetings because we never were able to get to
7 draw a specific map that we would be able to
8 advance. You know, as I indicated in the last,
9 the last time we had a session, that, you know,
10 from February 11th, you know, through, you know,
11 June 28th or whenever the budget passed, this was
12 not the first thing on anybody's mind, and for
13 most of the time during that period, there was
14 really no time to even give any consideration to
15 this, to any degree, so that you could set up the
16 process for caucus members to sit down and look
17 deliberately at this, and of course, as I
18 indicated before, we had no resources allocated to
19 us. We didn't have an attorney to advise us. We
20 didn't have any consultants to assist us. The
21 legislative counsel told us that they could be of
22 very marginal benefit to us because they didn't
23 have anybody on their staff that really had been
24 trained in this area.
25 Q Mr. Kessler can draw maps; yes?

163

1 A He can draw maps, of course.
2 Q In fact you were concerned that he would do that,
3 and you gave him instructions not to draw any when
4 you gave him the workstation, right?
5 A Well, yes. As a matter of fact, I mean, I would
6 say anybody can draw a map. But to draw a map
7 that's constitutional, that takes into account the
8 various legal principles, that's a different
9 story. And, but I would say that Representative
10 Kessler would be the most skilled at that of the
11 members of our caucus, just in the sense that
12 he's, you know, as I indicated before, he likes
13 drawing maps. He draws maps all the time. He's
14 been drawing maps probably three years before this
15 ever came about. Just, he finds it interesting to
16 do that, as much like I find it interesting to
17 work out.
18 Q Does Mr. Kessler know any of the legal
19 standards --
20 A Yes.
21 Q -- involved in writing maps?
22 A Yes.
23 Q Could you have had Mr. Kessler write a map and ask
24 him to have due consideration for the legal
25 standards?

164

1 A Of course you can ask anybody to do anything. I
2 don't think that it -- I do not think that members
3 of our caucus would have been comfortable with
4 that, though.
5 Q Why is that?
6 A Because I think that they probably would believe
7 that we would need some outside legal assistance
8 to draw them full and properly, and they would
9 think that Representative Kessler would not have
10 sufficient time and knowledge on his own to be
11 able to do this.
12 Q Did you ask the caucus if they would like to have
13 Mr. Kessler draw a map?
14 A No, I do not believe we asked them specifically,
15 but it did come up in the course of discussions
16 where people would say, you know, offer opinions
17 as to whether or not we really felt we could have
18 the resources to really draw a map that would be
19 constitutional and take into account the various
20 principles that are important.
21 Q And with whom were those conversations?
22 A Well, you know, conversations occur on the floor
23 when you might be taking up another bill, in your
24 recess, you can talk, somebody will come up and
25 say, you know, whatever we do, you should do X, Y

165

1 or Z. So conversations happen every day in the
2 legislature on any array of different issues.
3 But, you know, but we, you know -- I think that,
4 trying to think back to the timeline of all this,
5 I think the first time that we thought that they
6 would actually come in with a map probably would
7 have been somewhere during this timeline of, you
8 know, right after the budget passed, you know, I
9 think it was made publicly available July 8th,
10 that there were going to be bills that they were
11 going to advance, and we might have heard a couple
12 days before that, but there might have been some
13 rumors circulating around they might try to
14 quickly pass this through because they were
15 worried about losing the majority.
16 Q And when you heard that rumor, did you rush to
17 Mr. Kessler and ask him to draw a proposed map?
18 A No, we did not. As a matter of fact, during --
19 when this -- when we first heard and had the sense
20 that they might try to fast forward this process,
21 in fact I talked with Senator Miller about this
22 and what they might do, what we might do, and our
23 conclusion was that it would really be impossible,
24 you know, to -- and in short order, if they were
25 going to push this through, to be able to come up

166

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

1 with maps that we would have any confidence in,
 2 with the resources and time that we had.
 3 Q So you decided not to try?
 4 A We decided that it would be virtually impossible
 5 with the legal resources available to us, which
 6 was zero.
 7 Q Mr. Barca, I'm going to hand you now what's been
 8 marked Exhibit 1052. Take a look at that and tell
 9 me if you've seen that before.
 10 (Witness examines document)
 11 A I don't specifically recall this e-mail
 12 personally, but it's obviously, pretty much it's
 13 the same base, and then it's Cathy Friedl sending
 14 an e-mail to Matt.
 15 Q And the date on that e-mail is March 15th, 2011;
 16 is that right?
 17 A Yes, that's right.
 18 Q The bottom of the e-mail says *Thanks Matt, I've*
 19 *been talking with Peter and Rich and Sharon and*
 20 *Joel on this, but as usual, we're slow in coming*
 21 *to a consensus.* Do you see that?
 22 A Yes, I do.
 23 Q Would Peter be you?
 24 A I would assume so.
 25 Q Who is Rich?

167

1 A Rich is my chief of staff, Rich Judge.
 2 Q Sharon?
 3 A Sharon works for Representative Kessler.
 4 Q And Joel?
 5 A And Joel is the head of the ADCC at this point.
 6 At that point he was just an independent
 7 contractor or consultant or whatever.
 8 Q Is that Joel Gratz?
 9 A Joel Gratz, yes, that's correct.
 10 Q What conversations was Cathy having with you about
 11 the topic of this e-mail?
 12 A Well, I think this is similar to the last one,
 13 that, you know, about whether or not this computer
 14 equipment should be put in Representative
 15 Kessler's office.
 16 Q Why were these people slow in coming to a
 17 consensus?
 18 A Well, because Rich thought it would be a mistake,
 19 if I'm following this correctly, which, you know,
 20 I don't know that I have precise recollection, but
 21 generally speaking, I can say that Rich thought it
 22 would be a mistake to have this in
 23 Representative Kessler's office. He thought that
 24 we should find some neutral site, you know, to put
 25 the equipment, so that, you know, people would

168

1 have, other members would have access to the
 2 equipment as well.
 3 Q What in your mind would be a neutral site?
 4 A If there was an empty room somewhere or, you know,
 5 perhaps our office, for instance. You know, where
 6 different members that have different approaches
 7 or ideas would have more access to it. Maybe -- I
 8 don't know if there's -- I'm not sure what sites
 9 in particular might have been discussed, but that
 10 would be as opposed to just one legislator's
 11 office.
 12 Q Was the concern that Mr. Kessler would not allow
 13 anyone else to use the computer?
 14 A Well, there were a couple concerns. The first
 15 one, as I indicated earlier, was there was some
 16 concern on some people's part that did not have, I
 17 guess what they would describe as a very cordial
 18 or, you know, good relationship with
 19 Representative Kessler. And then secondly, the
 20 fact that obviously, you know, if he wasn't in his
 21 office or, you know, that people wouldn't have
 22 access to go in there to use the equipment if they
 23 so chose to use it.
 24 Q Eventually you did come to a consensus; is that
 25 right?

169

1 A I guess you could say that.
 2 Q There was the decision made to --
 3 A Well, I made the decision. I'm not sure how much
 4 of a consensus it was, but I decided eventually
 5 that we should leave it -- or should put it in
 6 Representative Kessler's office.
 7 Q Why did you decide that?
 8 A I just felt that, first of all, there was very
 9 little room in our office to put it in. It wasn't
 10 clear to me where else, you know, we might put it.
 11 And Representative Kessler, you know, assured me
 12 that he would, you know, sort of accede to the
 13 wishes of the caucus, in terms of whether or not
 14 we brought forward a map or not.
 15 Q Do you know if other members of the Assembly
 16 Democratic Caucus sought access to the computer
 17 and were unable to gain access?
 18 A I don't know. Nobody ever complained to me that
 19 they sought access and didn't have access, but I
 20 don't know if somebody perhaps did try and they
 21 were unable to, that I don't know. I didn't
 22 receive any complaints in that regard.
 23 Q Do you know if anyone else in the Assembly
 24 Democratic Caucus did use the computer station
 25 that got put in Mr. Kessler's office?

170

1 A I don't know for sure, but I doubt it. I doubt
2 that people -- again, just to refresh our memory,
3 I mean, this was one of the most active sessions
4 in history in the legislature, and then you have
5 the whole collective bargaining issue that was
6 part of the governor's, what he called the
7 Budget Repair Bill. That followed closely with,
8 you know, announcements on the budget and the fact
9 that we were going to cut the highest amount ever
10 cut by public education and, you know, all kinds
11 of issues that just were of just such enormous
12 significance, that I would be surprised if any
13 members of our caucus had the time or were able to
14 dedicate the energy to go and learn how to utilize
15 this equipment. So I would be surprised if
16 anybody did, to be frank.

17 Again, the other thing is just the fact that
18 we -- I was always operating under the assumption
19 that these maps would come up in the fall after
20 the cities and the counties had finished drawing
21 their ward maps.

22 Q Did any of the members of the Assembly Democratic
23 Caucus ever come to you and ask that any maps be
24 created?

25 A I don't specifically recall. I mean,

171

1 Representative Kessler, of course, had indicated
2 that he thought, you know, it might be useful for
3 him to draw some maps. I don't recall anybody in
4 the -- in our caucus saying that they wanted to
5 draw their own map or that they thought he should
6 draw a map necessarily. So no, I mean, that would
7 be the extent of my recollection of people's
8 viewpoints of drawing maps.

9 Q So when Mr. Kessler suggested to you that he could
10 draw some maps, what was your response?

11 A Well, I mean, this came up on a couple different
12 instances. We were attempting to work in concert
13 with Senator Miller in the senate caucus, at least
14 in terms of how we might approach this and -- so I
15 think I had just, to the best of my recollection,
16 just told him that I thought it was better for him
17 not to draw maps at this point just because I felt
18 that it would make members of our caucus uneasy,
19 and we thought we, you know, that we better wait
20 until we actually had time to focus on this as a
21 caucus.

22 Q If you were worried about Mr. Kessler drawing a
23 map because it would make members of your caucus
24 uneasy, why did you give him the workstation?

25 A Because we felt -- first of all, we didn't know

172

1 what our timeline would be, but he's the one
2 person that would have the most facility to use
3 it, if we had decided at some point in the future
4 that we were going to attempt to put together a
5 map. And also, we felt that when the republicans
6 eventually did draw up their map, that he would
7 then be able to analyze it, you know, to some
8 degree with the knowledge that he had, where it
9 didn't seem like any other member would have that
10 capacity to do so. So for those reasons.

11 Q But you instructed him not to draw any maps?

12 A Yes.

13 Q Mr. Barca, I'm going to now hand you what's been
14 marked Exhibit 1053. Please take a look at that
15 and let me know if you've seen that before.

(Witness examines document)

17 A These talking points, I don't recall this -- like
18 I look at this list and people's phone numbers and
19 who to call. At times we did have lists for
20 people to call. I don't recall this one
21 specifically, but I'm sure that doesn't surprise
22 me. And in talking point for leadership call,
23 this does look familiar, that this would have been
24 put together as sort of -- that these would be
25 sort of the points that we would use.

173

1 Q All right. And the date of this e-mail is what?

2 A July 1st.

3 Q 2011?

4 A That's correct.

5 Q The chart that you've been making oblique
6 reference to on Exhibit 1053, do I understand that
7 to be a list of people that were to be called to
8 discuss these talking points?

9 A Yes. That is correct.

10 Q And the person who was supposed to make the calls,
11 is that in the -- outside to the left of the
12 table --

13 A Yes.

14 Q -- that's the person that is supposed to make --

15 A That would call these particular members, yes.

16 Q There are a number that were assigned to you. Did
17 you make those calls?

18 A I would guess I would have, yes.

19 Q There is a PBS initials. Do you know who that
20 stands for?

21 A Yes, that's Penny Bernard Schaber.

22 Q And Roys is who?

23 A That's Representative Kelda Helen Roys.

24 Q Rich?

25 A Rich Judge.

174

1 Q And Ms. Seidel?

2 A That's Representative Donna Seidel.

3 Q Do you know who decided who would call each of

4 these members?

5 A I don't recall. It seems a little odd just

6 because I don't know why Representative Seidel,

7 usually if we decide up calls, she would make an

8 equal number. So I don't recall why she only had

9 to call herself, so.

10 Q I think she must have given all of hers to you.

11 A I'm guessing that's the case. Now I can see why

12 she's running for senate. But no, I don't recall,

13 maybe she was out of town or something. But, you

14 know, I don't know if -- normally the staff sort

15 of recommends people that we can call. And

16 sometimes when we're in a meeting, we'll say, Oh,

17 I'll take that person and I'll take this person,

18 or I'm going to see this person this week, let me

19 talk to them, so. In this case, I don't recall

20 how these were divvied up. I must not have had

21 much input because I never would have taken more

22 than everybody else combined.

23 Q The wages of not attending a meeting, I think.

24 All the people to be called here, these are all

25 the members of the Assembly Democratic Caucus?

175

1 A That's correct.

2 Q Let's turn to page 2 of Exhibit 1053.

3 A Uh-huh.

4 Q And let's look at that third bullet point.

5 A Uh-huh.

6 Q It says, "Our message is the process and the map

7 is unconstitutional, political and partisan. It

8 is not in the best interest of residents." Do you

9 see that?

10 A Yes, I do.

11 Q And that was one of the talking points?

12 A Yes.

13 Q That's one of the talking points that you

14 discussed with other members of the Assembly

15 Democratic Caucus?

16 A Apparently.

17 Q Had you seen the map yet as of July 1st, 2011?

18 A No, I don't believe so.

19 Q How can you know that it's unconstitutional,

20 political, partisan, not in the best interests of

21 residents?

22 A Well, as I indicated earlier, you know, we had

23 gotten wind that there may be a map coming out, so

24 this must have been the day that we determined

25 that. And there must have been some speculation,

176

1 based on whatever might have leaked out, that they

2 were going to have something that would be

3 extremely partisan and would not be constitutional

4 and -- I remember at some point there was some

5 discussion of the Hispanic community in

6 particular, and I think that some republicans had

7 reached out to some republican -- somebody who is,

8 you know, involved in the Hispanic community that

9 was a strong republican. So it might have been

10 related to that, but there was some concern that

11 they were going to draw a map that would really

12 disenfranchise the Hispanic community. But I

13 don't recall exactly what date we learned what,

14 but, you know, as I indicated, right around the

15 time we passed the budget or right after we passed

16 the budget, I think we passed the budget probably

17 like four or five days earlier, that there was

18 some speculation coming out that the republicans

19 might move forward with some map. And at that

20 point there was, you know, I'm trying to recall

21 the timeline of exactly when these recalls

22 started, and so we knew that they were very

23 nervous about being able to retain the senate, so

24 I know there was speculation they might try to

25 quick ran this through before the election in the

177

1 event that the senate did turn to democratic.

2 Q Did you -- as of July 1st, 2011, had you seen any

3 specific evidence that the maps that the

4 republicans would propose would be

5 unconstitutional?

6 A I mean, as I indicated, only what we had heard

7 through the grapevine, so to speak, that, you

8 know, the first recollection I have was this

9 notion of the Hispanics, and I don't remember if

10 that was that specific day or when that exactly

11 occurred, but that would have been the first

12 indication that there would be concerns.

13 Q So you're developing your talking points based on

14 the grapevine?

15 A Based on what we anticipated would be coming

16 forward.

17 Q So you hadn't seen anything specific to indicate

18 that the maps that would be coming out would be

19 unconstitutional?

20 A I mean, I had not seen a map myself specifically.

21 I was never invited to offices of Michael Best.

22 Q And if you hadn't seen a map, there's no way you

23 would be able to determine that it's

24 unconstitutional?

25 A Just speculation.

178

1 Q If you hadn't seen the map, you wouldn't be able
2 to tell that it's political?
3 A Well, you wouldn't know for sure any of these
4 things, obviously, all you would do is speculate,
5 but based on what we were hearing, we believed
6 that that would happen, and we must have thought
7 at this point that we were getting close to when
8 they were going to drop this map. So the
9 information we were getting from people was that
10 they were coming out with this map that was going
11 to be extremely partisan and unconstitutional, and
12 would hurt Hispanics and hurt other community of
13 interest.
14 Q And that information was on the grapevine, nothing
15 that you actually saw?
16 A Nothing that I saw specifically, no.
17 Q Who in the grapevine process told you that the map
18 would be unconstitutional or political or partisan
19 or not in the best interests of residents?
20 A Well, that would be our staff. We have staff
21 teams that get together, and based on the
22 information they have, they advise us what they
23 expect is going to be coming. And so I would
24 guess it would have come from our staff resources.
25 We do have attorneys on our staff, and also

179

1 speculate, based on what they were hearing, that
2 this is the way it would shape up.
3 Q So who on your staff told you this?
4 A Oh, I don't remember who specifically. I mean, we
5 have staff meetings -- we have staff in meetings
6 that we have all the time, and there could be,
7 could be any number of people. I mean --
8 Q But you don't remember off the top --
9 A I don't remember specifically any one person. But
10 typically in any meeting that we would have with
11 leadership, you would have sort of the leadership
12 staff that would come to that. So it could be,
13 you know, people in my office, could be like
14 Rich Judge or Matt Egerer, could be Chris McKinney
15 from Representative Seidel's office, could be
16 George from -- or Tim, Tom from Representative
17 Kelda Helen Roys' office. I mean, could be any
18 number of people that are there for any given
19 meeting, and sometimes we invite different staff
20 depending on the topic we were discussing.
21 Q Whoever told you this on your staff, did you ask
22 them what their source was for the assertion that
23 the map would be unconstitutional, political,
24 partisan, or not in the best interests of
25 residents?

180

1 A Oh, I'm sure at the time I would have, yes. I
2 mean, I don't recall specifically that particular
3 conversation. I mean, as I indicated, my first
4 recollection of hearing about the concerns of it
5 being unconstitutional would have revolved around
6 the Hispanic community, but I don't recall exactly
7 what date that transpired.
8 Q Did you ask him to find out any specifics in the
9 sense of giving any kind of a document --
10 A Of course we were --
11 Q Wait until I finish.
12 A Oh, I'm sorry, excuse me.
13 Q Did you ask him to find out any specifics in the
14 sense of finding some kind of documentary evidence
15 that might substantiate that the proposed map
16 would be unconstitutional, political, bipartisan,
17 or not in the best interest of residents?
18 A Of course. Yeah, we continually were attempting
19 to, you know, gather, you know, copies of any
20 potential bills that were coming forward or, you
21 know, any potential maps that would be coming
22 forward. So, you know, there are many people,
23 particularly in Milwaukee, where it seemed like
24 there was, you know, a lot more people that were
25 more actively trying to gain information, and I

181

1 think that republicans specifically, as I
2 indicated, reached out to the republicans in the
3 Hispanic community specifically. So, but I think
4 there were others as well, although I don't
5 recall. But that's, like I indicated, that's my
6 best recollection. You know, this is seven months
7 ago, I forget, and there's been a lot of business
8 that's transpired in between, so.
9 Q How soon were you able to make these calls that
10 were assigned to you in Exhibit 1053?
11 A I don't recall. Let's see, this is a Friday, so
12 I'm guessing that probably I would have made these
13 calls like over the course of the weekend prior to
14 coming back the following week.
15 Q Had you received any specific evidence that the
16 maps that were to be proposed were
17 unconstitutional, political, partisan, or not in
18 the best interests of residents by the time you
19 finished making those calls?
20 A I think I've answered that question. I didn't get
21 any new information from the time that we left
22 this meeting and the time I made calls, so I was
23 basing it on the information that we had on that
24 Friday.
25 Q Let's look at page 3 of Exhibit 1053.

182

1 A Uh-huh.
 2 Q The first bullet point on that page says, "We will
 3 be meeting as a caucus to talk strategy - we will
 4 need to keep our caucus strategy confidential."
 5 Do you see that?
 6 A Yes, I do.
 7 Q Why did you need to keep the caucus strategy
 8 confidential?
 9 A Well, in terms of strategy, we what mean by
 10 strategy normally would be if you were going to be
 11 offer memorandums, for instance. You know,
 12 specifically, you know, usually you wait until
 13 you're ready to disclose that. So for instance,
 14 let's say if we were -- if we had made a decision
 15 at that point to offer a map or not offer a map,
 16 we might not reveal the fact that we were going to
 17 offer a map, or if we had to amend it, let's say,
 18 to try and change the process in some regard so
 19 that, for instance, to try and fight this issue
 20 that they wouldn't use a ward that was previously
 21 devised by the county board or city council,
 22 things of that sort.
 23 Q How many caucus strategy meetings did you have
 24 with respect to redistricting?
 25 A I don't recall. I mean, plus I think it depends

183

1 on your definition of strategy. I mean, I would
 2 speculate, though, that there might have been a
 3 couple meetings where we, you know, specifically
 4 talked strategy in terms of what amendments we
 5 would offer, things of that sort.
 6 Q And what was the strategy?
 7 A Well, in the final analysis, we decided that we
 8 could not come up with a map in the time period
 9 that we had here that we could have enough
 10 confidence that ours would in fact be
 11 constitutional, so we decided not to try to offer
 12 a map ourselves.
 13 Q That was the extent of your strategy?
 14 A You know, there was also discussion of other
 15 options, you know, so I'm sure that we discussed
 16 other possible courses of action that we would
 17 take, but I think that we -- you know, the other
 18 part of the strategy would be of course, when you
 19 get to the floor, you strategize in terms of who's
 20 going to speak on this topic, who actually
 21 understands it well enough to be able to give a
 22 coherent argument. People whose districts were
 23 most adversely affected, for instance, in the
 24 Kenosha-Racine area. I think I had mentioned last
 25 time that, for the first time in I think about a

184

1 hundred years, we would not have a state senator
 2 for each Kenosha, Racine and Beloit, where they
 3 were dividing that community in half or in, you
 4 know, Marshfield where I believe they were
 5 dividing the community in half.
 6 So, you know, the other part of the strategy
 7 is whose district or somebody, you know, in that
 8 immediate vicinity would have a district that's --
 9 whose community of interest would be separated,
 10 and of course, you know, Hispanic community,
 11 Representative Zamarripa, Representative Zepnick,
 12 who also represents part of the Hispanic area, as
 13 well as some of the African-American members that
 14 were concerned about how it would affect minority
 15 representation. So there was a lot of discussion
 16 of that, that's another part of the strategy, is
 17 who will talk and sort of what our message will
 18 be.
 19 Q What were the other options that you discussed in
 20 the caucus strategy meetings?
 21 A One other option was whether or not we could
 22 analyze the democracy campaign, I forget the name
 23 of it, but, you know, the coalition of what we
 24 describe as Good Government Groups, whether or not
 25 we would have enough information on that map to

185

1 offer that as an alternative, and we didn't feel
 2 like we would. And I think there were other ideas
 3 that people had as well, but I don't recall
 4 specifically. Those are the things that stand out
 5 to me.
 6 Q Did Mr. Kessler participate in any of those caucus
 7 strategy meetings?
 8 A I believe so. I believe he was present. I
 9 couldn't tell you offhand, but I would think he
 10 would have.
 11 Q Did he suggest that he could draw a map?
 12 A I don't recall if he specifically mentioned in
 13 caucus that he would like to or could draw a map.
 14 I don't recall specifically, because, you know,
 15 obviously I talked to him individually as well as
 16 in caucus, and it's hard to remember seven months
 17 ago who said what during the meeting.
 18 Q Did anyone in any of those caucus strategy
 19 meetings ask that the caucus would develop a map?
 20 A No, I don't recall anybody specifically saying we
 21 should offer a map, that that should be part of
 22 our strategy, because I think everybody
 23 understood, you know, from January, and in every
 24 subsequent attempt we made to try to get
 25 resources, that we really would not have

186

1 sufficient resources and access to attorneys and
2 consultants. So I don't specifically recall
3 anybody saying, Well, look, I think we could
4 produce a map that we could feel confident would
5 meet the constitutional test.
6 Q The next bullet point says *Please make sure there*
7 *is no discussion of what democrats might do with*
8 *anyone, especially the press.* Do you see that?
9 A Uh-huh.
10 Q Now, why was it important not have any discussion
11 of what the democrats might do with anyone?
12 A Well, again, typically when you're going to the
13 floor, and you're preparing to go to the floor,
14 you typically want to sort of keep your amendment
15 strategy close to your vest in terms of what you
16 might offer, what you might not offer.
17 Q Is that a transparent process?
18 A It's transparent because, in the sense that your
19 amendment strategy of what amendment should have
20 been offered, at some point did offer them, but
21 we, at that point we just -- well, of course in
22 July, I don't think we had developed our strategy,
23 so, but the idea would be that as we were thinking
24 through what we might do, that, you know, you ask
25 people to keep to themselves for the time being

187

1 until we're ready to reveal it.
2 Q Were the members of the public invited to your
3 Assembly Democratic Caucus meetings?
4 A Well, typically for the Assembly Democratic
5 Caucus, I mean, usually you have a short period
6 that's open to the public and then a period that's
7 not open to the public, so depends on which period
8 that you're involved in, so.
9 Q Is it typical to have caucus meetings that are not
10 open to the public?
11 A Virtually all the times when the caucuses meet,
12 both the democratic and the republican caucuses,
13 they virtually always have closed caucuses for
14 part of that period, in the democratic and
15 republican caucus.
16 Q Do you know if it violates the open meetings law
17 to have closed caucus meetings?
18 A I know that if -- you are allowed to have a closed
19 caucus meeting and that it does not violate the
20 law, if you're discussing partisan strategy.
21 Q Why was it especially important not to talk to the
22 press?
23 A I don't know that it was especially important not
24 talk to the press specifically, but it's just
25 especially important to keep your discussion of

188

1 what amendment you might offer to not be made
2 public, so if it's the press, it would be the same
3 thing.
4 But I think, now that I think about it -- let
5 me back up here -- I think the concern here was
6 that -- I'm searching, you know, or I'm trying to
7 recall. This might have been referenced to the
8 fact that we didn't have a map at that point. So
9 we didn't really have anything to respond to, is
10 what I would guess, that we didn't -- we hadn't
11 seen their map, we didn't know exactly what they
12 were going to propose, so we didn't want somebody
13 to, you know, to say that, you know, this
14 disenfranchised the Hispanic community at that
15 point, even though we speculated based on what we
16 were hearing that it very well, that it in all
17 probability would, but, you know, obviously since
18 we didn't have the map, we wanted people to wait.
19 Q Well, the bullet point speaks in terms of what the
20 democrats might do, right?
21 A Uh-huh.
22 Q Why is it especially important that the press not
23 know what the democrats might do?
24 A Well, as I'm indicating, you know, my recollection
25 of that, and I see that it's in that same bullet,

189

1 but my recollection of that was that the idea was
2 that we didn't want people to try to speculate to
3 the press before we knew what the map might look
4 like. So I think that's poorly worded.
5 Q Let's skip the next bullet point and go to the
6 following. It says, "Remember, we will not be
7 passing a map - everything we do is about
8 positioning both from a message and a legal
9 perspective." Do you see that?
10 A Yes, I do.
11 Q So apparently the decision had been made by
12 July 1st, 2011, that the Assembly Democratic
13 Caucus would not be offering a map?
14 A Uh-huh.
15 Q Is that right?
16 A I would guess that we pretty much had decided on
17 that by that point.
18 Q So everything is about positioning both from a
19 message and legal perspective. What do you mean
20 by that?
21 A Well, just meaning that we did not believe we
22 could draft a map, so we couldn't say, you know,
23 at some point here's your map, here's our map,
24 because we didn't feel we could actually develop a
25 map that would meet the, you know, the full

190

1 constitutional test that was needed. So that
2 would be generally what I would be indicating.
3 Q Does this suggest that the democrats had no
4 intention of influencing the substance of the map?
5 A Of influencing the substance of their map, you
6 mean, or what?
7 Q Yes.
8 A Well, I think we hoped to influence it because we
9 had hoped that if they came up with something that
10 would be, what we would consider to be
11 unconstitutional or dividing community of
12 interests, that we would have some success in
13 convincing them not to pass that.
14 Q But that would be just from a positioning
15 perspective?
16 A No, that would be from an actual perspective. I
17 mean, we all voted, in the final analysis, as you
18 know, we voted -- the democrats voted against it
19 because we believe that it did divide community of
20 interests in ways that are unconstitutional and
21 improper, and that's attempting to influence, you
22 know, a decision. We didn't think it was a good
23 map. We didn't think it was a fair map. We
24 didn't think it was a constitutional map.
25 Q How did you know that it was an unconstitutional

191

1 map?
2 A Well --
3 Q When you say you didn't have any resources to
4 analyze maps, how did you learn that it was
5 unconstitutional?
6 A Well, after the map came out and we looked at it,
7 and we could see that, for instance, in the
8 Hispanic community, that they had diluted the
9 Hispanic influence, we know that, you know, courts
10 have generally said that you can't do that. So
11 sometimes it's easier to know what is not
12 constitutional than to know how to devise it
13 exactly yourself to make it constitutional. It
14 takes resources to do that. But we do know that,
15 you know, amongst African-American populations, we
16 know that there have been court decisions that
17 you're not supposed to pack, you know, 90 percent
18 African-Americans in one district because
19 otherwise you might be able to have an additional
20 African-American district. So I mean, those basic
21 principles are pretty widely known. Core
22 precedences are, you know, available to people.
23 So it's easy to know people are doing things that
24 have not met the tests that the courts have ruled
25 on in the past.

192

1 Q At the time that you were voting on the map, how
2 did you know that the map diluted the Hispanic
3 voting strength?
4 A Well, there was a hearing, of course, and at the
5 hearing we heard from many people, and I also, I
6 had many people calling my office from the
7 Hispanic community and very upset about that, and,
8 you know, we, based on the legal precedences that
9 were given to us and based upon the people that
10 know those neighborhoods extremely well and have
11 been working on a county level to make sure that
12 the county and the city maps were constitutional,
13 it was our firm conviction that they were not
14 constitutional with the way that they devised the
15 Hispanic population maps.
16 Q You mentioned that it's easy to tell if a map is
17 unconstitutional given the legal standards. What
18 are the legal standards?
19 A Well, as I indicated, you're supposed to --
20 with -- you're supposed to not -- supposed to have
21 maximize minority representation, for instance.
22 You're supposed to not disenfranchise large
23 numbers of people. In this map, I understand,
24 over 300,000 people were disenfranchised. You're
25 supposed to keep community of interest together.

193

1 You know, those are some of the basic principles
2 that I'm aware of. But again, I'm not an expert
3 on it.
4 Q How do you tell if a minority community's voting
5 strength has been diluted?
6 A Well, my best understanding of that would be that,
7 in the case of the Hispanic population, because of
8 the actual number of Hispanics who historically
9 come out to vote in a given election, you, you
10 know, you want to make sure that you're not -- for
11 instance, if you could have a Hispanic actual
12 performing majority, that you enable that to
13 ensure that you have a Hispanic representative
14 given the fact that you have enough Hispanics to
15 be able to meet that test.
16 Q How do you tell if you've met that standard?
17 A Well, I don't know all the details of
18 demographically how they analyze that, but, you
19 know, the people who we've heard from from the
20 Hispanic community that spend a lot of time
21 looking at this, they, you know, through the
22 census tract information, they're able to tell
23 where people of Hispanic origin live and they're
24 able to make conclusions. That's very rough,
25 because, again, I'm not an expert in this by any

194

1 stretch of the imagination.
2 Q Did anyone give you any data in support of any
3 claim that the map was unconstitutional?
4 A My sense of it is that, as I recall from the
5 hearing, that they did have data present that was
6 presented to the committee.
7 Q Do you remember what it was?
8 A I mean, I don't recall the details, no. I mean, I
9 assume it has to do with ward by ward, you know,
10 the proportion of Hispanic people that live there.
11 Q Let's go to the next bullet point. "We need
12 to" -- and this is, again, July 1st, 2011. "We
13 need to stick to the bigger picture message - the
14 GOP map is yet another abuse of power, their map
15 is unconstitutional, divisive, and a blatant
16 attempt to reduce accountability and secure
17 political advantage for republicans." Do you see
18 that?
19 A Uh-huh.
20 Q You still hadn't seen a map by that point, right?
21 A No. My sense of that, though, is that it was
22 around that time period that we had picked up the
23 sense that they would be introducing a map very
24 soon and that they would pass it with very little
25 input and as quickly as they possibly could before

195

1 the recall elections could take place so that they
2 could ensure that if they lost the majority, they
3 could still have had this map, which benefited
4 their party.
5 Q So your conclusion that it's unconstitutional here
6 is based on what you heard on the grapevine?
7 A I think I've answered that already, and my answer
8 wouldn't change.
9 Q Same thing for it being divisive?
10 A Yes.
11 Q Same thing with respect to it being a blatant
12 attempt to reduce accountability?
13 A Again, yeah, that would refer to the fact that we
14 knew that recall elections were happening in a
15 short period of time and that -- that part seemed
16 pretty clear that they were going to try and pass
17 this prior to those recall elections, which would
18 ensure that it would allow very little time for
19 the public to interact or to -- for people to
20 participate in this process. I mean, obviously at
21 this point there was also rumors going around that
22 republicans had seen this map and that it was
23 available to them but not available to the public.
24 Q The last bullet point in that section is, "We are
25 working with the senate, and Senator Miller is

196

1 having similar conversations with his members."
2 Do you see that?
3 A Yes, I do.
4 Q Is it your understanding that Senator Miller was
5 in fact at that time having similar conversations
6 with members of the Senate Democratic Caucus?
7 A Yes. I believe so.
8 Q And would that be with the -- based on the same
9 type of information that you had available to you?
10 A Basically, I believe that's true.
11 Now, I think I indicated Senator Miller and I
12 had, you know, talked periodically during this
13 process, and, you know, the thing that
14 Senator Miller and I both agreed was that our goal
15 overall, or our hope at least, was these other
16 points that are here, that we should wait until
17 the locals are done with their maps because it
18 would cost local units of government far more
19 money if they had to take other maps, that we
20 should probably ensure that we call and have as
21 many hearings as possible, the public could
22 interact with this process and make sure that, you
23 know, we would be able to get out information as
24 quickly as we could.
25 Q All right. I'm going to hand you now what's been

197

1 marked Exhibit 1054.
2 A Thank you.
3 Q Please take a look at that and tell me if you've
4 seen that before.
5 (Witness examines document)
6 Q Have you seen that before?
7 A I don't recall seeing this e-mail before, but I'm
8 aware of the contents of it.
9 Q Okay. The first e-mail on this exhibit is from
10 Adrienne Ramirez. It appears that she's in the
11 office of Representative Tony Staskunas; is that
12 right?
13 A That's correct.
14 Q Do you know what her position is in
15 Mr. Staskunas's office?
16 A I don't know her title per se, but she's the head
17 of his office, so to speak.
18 Q Her e-mail says that -- and her e-mail is
19 addressed to Matt Egerer. She says We contacted
20 LRB with drafting requests for two amendments to
21 Senate Bill 148. Do you see that?
22 A Yes, I do.
23 Q Do you know what two amendments she would be
24 referring to?
25 A I don't know the specific details of them, but I

198

1 know that Representative Staskunas had looked at
2 whether or not he could redraw his specific
3 district. And so he had talked to somebody I
4 believe in LRB, and they were analyzing whether or
5 not they felt they could bring forward a credible
6 amendment, and whether or not he might be able to
7 get some support by the republicans to change his
8 district specifically or, you know, the area
9 around his district.

10 Q Did Mr. Staskunas ever talk with you about
11 modifying his district?

12 A Yes, he did. I mean, he indicated to me that he
13 was looking into that possibility.

14 Q What did he want to change about his district, do
15 you know?

16 A Well, my understanding is that, and I don't know
17 that I know all the details, but his district
18 historically had centered around West Allis, so
19 the -- and I don't know how many people
20 specifically live in West Allis, but that
21 West Allis generally was held in one legislative
22 district. And so I think his goal was to try and
23 keep West Allis within his district, sort of that
24 community of interest would be sort of kept
25 intact, per se.

199

1 Q Whose district was it going to, do you know?

2 A I don't know specifically. My sense of it is that
3 they actually split West Allis in two, three,
4 maybe four parts, so that, you know, they no
5 longer would have one representative that would
6 primarily be looking out for the interests of
7 West Allis.

8 Q Mr. Egerer's response to Ms. Ramirez appears at
9 the top. It says, "The computer is in
10 Representative Kessler's office. He has been the
11 one from our caucus using it."

12 A Uh-huh.

13 Q Do you see that?

14 A Yes, I do.

15 Q What had he been doing with it, do you know?

16 A I don't know specifically. I mean, he had been
17 looking at sort of the -- I mean, at this point,
18 you've got July 15th, so it was after the public
19 hearings. So I assume what he might be referring
20 to here is he probably took this map that they
21 made publicly available on July 8th, and I'm
22 guessing he had dissected it to analyze what
23 exactly the republicans had done as best he could
24 given that he didn't have any outside legal
25 assistance or technical assistance.

200

1 Q Did he ever provide you with an analysis of that
2 map?

3 A Roughly speaking. I mean, he would be one of the
4 people, like when you had asked me earlier about,
5 with the testimony from the Hispanics and when we
6 had heard from Hispanics, that what the
7 republicans had done was unconstitutional, he
8 would be somebody that, you know, I would
9 speculate, although I'd have to say I don't
10 remember specifically, but, you know, that would
11 have said this is a problem and that they could
12 have done better or, you know, looked at the
13 disenfranchisement of the population. But, I
14 mean, I don't remember specifically every one of
15 those issues.

16 Q Let's turn back for a moment to Exhibit 1053.

17 A Yes.

18 Q This is an e-mail from Rich Judge to you?

19 A Yes.

20 Q And the e-mail address to which it was sent goes
21 pbarca7@yahoo.com?

22 A Yes.

23 Q Do you see that?

24 A Uh-huh.

25 Q That's your personal e-mail account?

201

1 A Yes, it is.

2 Q Do you have any other personal e-mail accounts?

3 A Oh, I have quite a few.

4 Q And with which service providers?

5 A With like Road Runner, for instance.

6 Q Hotmail?

7 A No.

8 Q Gmail?

9 A Yes.

10 Q Do you have multiple e-mail accounts with Yahoo
11 and/or Gmail?

12 A With Gmail, yes. I don't know about Yahoo. My
13 staff has, you know, at times set something up.

14 Q When you received the subpoena that required the
15 production of documents, did you go back and check
16 your Yahoo, Road Runner, and Gmail accounts for
17 responsive information?

18 A You would have to ask my staff. I didn't
19 specifically do it, but I doubt it, because this
20 account typically is the one that when I've had
21 problems with our server, our legislative server,
22 the speed in which I receive things, so sometimes
23 they've also copied it to the Yahoo account, which
24 is much quicker at getting me information. So
25 that's the only purpose why they would have used

202

1 that compared to any other account.
 2 Q On Exhibit 1053, it was sent directly to
 3 pbarca7@yahoo.com. It was not a CC. Do you see
 4 that?
 5 A It doesn't appear that there is. I'm not sure
 6 that there would have been. That's the way it
 7 appears here. Typically, though, you know, things
 8 are copied to both, if there's a speed issue.
 9 Q And under what circumstances do you have people
 10 send material directly to a personal account?
 11 A Well, as I've indicated from my office, it would
 12 be if there is an issue of timing, would be the
 13 primary issue.
 14 Q All right. Mr. Barca, I'm going to hand you now
 15 what's been marked Exhibit 1055. Please take a
 16 look at that and tell me if you've seen that
 17 before. And I'll represent that this is a copy
 18 taken from the material that you've produced to
 19 us.
 20 (Witness examines document)
 21 A Okay. I'm sorry, what is the question again?
 22 Q Yes. Have you seen this before?
 23 A I mean, I've seen many of these before. This is a
 24 history of what happened with Senate Bill 148.
 25 And then it was a copy of the substitute

203

1 amendment, which we discussed the last time we
 2 met. And beyond that there's an amendment from
 3 Representative Krusick that we had not talked
 4 about before.
 5 Q Okay. On the first two pages, what would we --
 6 what would we term that? Is that legislative
 7 history? Is there another term that we would use
 8 to describe that?
 9 A There could be. I mean, I think commonly we refer
 10 to it as the legislative history, that, you know,
 11 Senate Bill 148 was introduced on July 11th and,
 12 you know, it was read the first time. There was a
 13 senate amendment offered, two days later there was
 14 a public hearing. The next day there was an
 15 amendment offered by Senator Zipperer, and it just
 16 goes right down the line right until the last day
 17 in which it was published, it was approved by the
 18 governor, and then published on August 10th.
 19 Q Do you believe that that's an accurate recital of
 20 the legislative history for Senate Bill 148?
 21 A I mean, I would be surprised if it wasn't. That's
 22 typically the report that follows, so I would
 23 almost certainly think that it is.
 24 Q Let's look at then the next three pages, and
 25 basically what I, I just want to make sure that

204

1 we're looking at the right things here.
 2 A Yes.
 3 Q Do you believe this is an accurate copy of the
 4 Assembly Substitute Amendment 1 to 2011 Senate
 5 Bill 148?
 6 A I would think so. It looks like it's in proper
 7 format, so I would believe this was produced by
 8 our Legislative Reference Bureau, who is assigned
 9 for doing these things.
 10 Q All right. Keep that in front of you for a
 11 moment, if you would. And I'll hand you what's
 12 been marked Exhibit 1056.
 13 A Okay.
 14 Q Take a moment and review that, and let me know if
 15 you've seen that before.
 16 (Witness examines document)
 17 A Okay, this is Senate Bill 149 and gives the
 18 legislative history for that bill. Then it has a
 19 substitute amendment. It looks similar to the one
 20 for 148. So, looks accurate.
 21 Q Good. All right. Two points then. To the best
 22 of your knowledge, the first two pages of
 23 Exhibit 1056, that would be an accurate recounting
 24 of the legislative history for Senate Bill 149?
 25 A I believe so, yes.

205

1 Q Do you know if the Assembly Substitute Amendment 1
 2 to 2011 Senate Bill 149, which appears on the
 3 following three pages, is substantively the same
 4 as Assembly Substitute Amendment 1 to 2011 Senate
 5 Bill 148?
 6 A Certainly appears to be. Appears to be identical.
 7 Q Based on your recollection of the events
 8 surrounding the passage of Senate Bills 148 and
 9 149, do you recall if there were any differences
 10 between the Assembly Substitute Amendment 1 as it
 11 relates to Senate Bill 148 as opposed to 149?
 12 A Not that I recall.
 13 Q To the best of your understanding, was it your
 14 intent to offer exactly the same substitute
 15 amendment to Senate Bill 148 as 149?
 16 A Well, I would imagine that Representative Hulsey
 17 is the one that offered the amendment, since he's
 18 the lead author, and I would assume that that was
 19 his intent.
 20 Q You were a co-sponsor of both?
 21 A Yes, I was.
 22 MR. KELLY: All right. If we could
 23 go off the record for just a couple minutes.
 24 (Recess)
 25

206

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

1 By Mr. Kelly:
2 Q Mr. Barca, do you recall the last time the
3 Wisconsin legislature passed and adopted a
4 redistricting map?
5 A You mean prior to the one that we're discussing
6 today?
7 Q Correct.
8 A Well, I assume it was in 2001, although I don't
9 know specifically.
10 Q Your understanding is the legislature adopted a
11 bill, a redistricting bill in 2001?
12 A Well, I don't recall specifically. I mean,
13 typically what happens is that, you know, bills
14 come up, and I can't remember if both houses were
15 of the same party. And then, you know, when I was
16 here in the Nineties, you know, both houses were
17 democratic but the governor was republican, so I
18 think we passed a bill and then the governor
19 vetoed it, but I don't recall specifically. So in
20 2001, I was in the legislature, so I don't recall
21 what exactly happened, if -- I don't remember if
22 one house was democrat and the other one was
23 republican. I just don't recall.
24 Q Do you recall if there was a legislatively adopted
25 redistricting map in the Eighties?

207

1 A In the Eighties? I don't recall offhand.
2 MR. KELLY: Okay. Nothing further.
3 A That even precedes me.
4 MR. KELLY: Hang on a second.
5 We've got to hear from Jackie. Jackie may
6 have or may not have -- Jackie?
7 MS. BOYNTON: No, I'm here, and no,
8 I have no questions.
9 MR. KELLY: Very good. Then we're
10 all done.
11 (Adjourning at 2:49 p.m.)
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208

1 STATE OF WISCONSIN)
) ss.
2 COUNTY OF DANE)
3 I, SARAH FINLEY PELLETTER, a Registered
4 Professional Reporter and Notary Public duly
5 commissioned and qualified in and for the State of
6 Wisconsin, do hereby certify that pursuant to
7 stipulation, there came before me on the 7th day of
8 February 2012, at 1:20 in the afternoon, at the
9 offices of Godfrey & Kahn, S.C., Attorneys at Law,
10 One East Main Street, in the City of Madison, County
11 of Dane, and State of Wisconsin, the following named
12 person, to wit: PETER W. BARCA who was duly sworn to
13 testify to the truth and nothing but the truth of his
14 knowledge touching and concerning the matters in
15 controversy in this cause; that he was thereupon
16 carefully examined upon his oath and his examination
17 reduced to typewriting with computer-aided
18 transcription; that the deposition is a true record
19 of the testimony given by the witness; and that
20 reading and signing was not waived.
21 I further certify that I am neither
22 attorney or counsel for, nor related to or employed
23 by any of the parties to the action in which this
24 deposition is taken and further that I am not a
25 relative or employee of any attorney or counsel

209

1 employed by the parties hereto or financially
2 interested in the action.
3 In witness whereof I have hereunto set my
4 hand and affixed my notarial seal this 13th day of
5 February 2012.
6
7
8 Notary Public, State of Wisconsin
9 Registered Professional Reporter
10 My commission expires
11 July 15, 2012
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210

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

<p style="text-align: center;">1</p> <p>1 [6] - 141:19, 141:21, 205:4, 206:1, 206:4, 206:10 1/12/11 [1] - 141:9 1000 [1] - 143:7 1049 [4] - 141:8, 144:1, 144:13, 145:3 1050 [2] - 141:9, 152:13 1051 [3] - 141:11, 158:1, 158:11 1052 [2] - 141:13, 167:8 1053 [8] - 141:15, 173:14, 174:6, 176:2, 182:10, 182:25, 201:16, 203:2 1054 [2] - 141:17, 198:1 1055 [2] - 141:18, 203:15 1056 [4] - 141:20, 144:1, 205:12, 205:23 10th [1] - 204:18 11-CV-1011 [1] - 140:11 11-CV-562 [1] - 139:12 11th [2] - 163:10, 204:11 12 [2] - 154:1, 154:6 12/13/10 [1] - 141:8 12th [2] - 155:24, 156:25 13th [3] - 151:22, 152:1, 210:4 144 [2] - 141:4, 141:8 148 [12] - 141:18, 141:19, 198:21, 203:24, 204:11, 204:20, 205:5, 205:20, 206:5, 206:8, 206:11, 206:15 149 [8] - 141:20, 141:21, 205:17, 205:24, 206:2, 206:9, 206:11, 206:15 15 [2] - 158:14, 210:10 152 [1] - 141:10 158 [1] - 141:12 15th [2] - 167:15, 200:18 167 [1] - 141:14 17 [1] - 143:4 173 [1] - 141:16 198 [1] - 141:17</p>	<p>1:20 [2] - 142:14, 209:8 1st [5] - 174:2, 176:17, 178:2, 190:12, 195:12</p> <p style="text-align: center;">2</p> <p>2 [1] - 176:2 2001 [3] - 207:8, 207:11, 207:20 2010 [3] - 148:24, 149:23, 151:22 2011 [15] - 141:19, 141:21, 149:23, 154:1, 154:6, 158:14, 167:15, 174:3, 176:17, 178:2, 190:12, 195:12, 205:4, 206:2, 206:4 2012 [5] - 139:21, 142:13, 209:8, 210:5, 210:10 203 [1] - 141:19 205 [1] - 141:21 2100 [1] - 143:7 2266 [1] - 142:23 262 [1] - 143:16 28th [1] - 163:11 2:49 [1] - 208:11</p> <p style="text-align: center;">3</p> <p>3 [1] - 182:25 3/15/11 [2] - 141:11, 141:13 300,000 [1] - 193:24</p> <p style="text-align: center;">4</p> <p>417 [1] - 143:15 447-2199 [1] - 143:16 4th [1] - 155:7</p> <p style="text-align: center;">5</p> <p>500 [1] - 142:20 505 [1] - 142:23 53021 [1] - 143:15 53202 [2] - 142:23, 143:7 53562-0321 [1] - 143:11 53703 [2] - 142:20, 143:4 5th [1] - 152:3</p>	<p style="text-align: center;">6</p> <p>620321 [1] - 143:10</p> <p style="text-align: center;">7</p> <p>7 [1] - 139:21 7/1/11 [1] - 141:15 7/15/11 [1] - 141:17 7th [2] - 142:13, 209:7</p> <p style="text-align: center;">8</p> <p>8th [2] - 166:9, 200:21</p> <p style="text-align: center;">9</p> <p>90 [1] - 192:17</p> <p style="text-align: center;">A</p> <p>abilities [1] - 162:16 ability [1] - 162:9 able [18] - 160:3, 163:6, 163:7, 165:11, 166:25, 171:13, 173:7, 177:23, 178:23, 179:1, 182:9, 184:21, 192:19, 194:15, 194:22, 194:24, 197:23, 199:6 abuse [1] - 195:14 accede [1] - 170:12 access [9] - 154:19, 169:1, 169:7, 169:22, 170:16, 170:17, 170:19, 187:1 accomplish [1] - 150:14 account [7] - 164:7, 165:19, 201:25, 202:20, 202:23, 203:1, 203:10 Accountability [5] - 139:14, 140:2, 140:13, 140:16, 142:5 accountability [2] - 195:16, 196:12 accounts [3] - 202:2, 202:10, 202:16 accurate [5] - 147:7, 204:19, 205:3, 205:20, 205:23 acquaint [1] - 154:7 action [3] - 184:16,</p>	<p>209:23, 210:2 active [1] - 171:3 actively [1] - 181:25 actual [3] - 191:16, 194:8, 194:11 ADCC [1] - 168:5 additional [2] - 155:8, 192:19 address [1] - 201:20 addressed [1] - 198:19 addressing [1] - 153:4 Adjourning [1] - 208:11 administrative [1] - 156:5 adopted [4] - 148:4, 207:3, 207:10, 207:24 Adrienne [2] - 141:17, 198:10 advance [2] - 163:8, 166:11 advantage [1] - 195:17 adversely [2] - 161:7, 184:23 advise [2] - 163:19, 179:22 affect [5] - 161:8, 162:7, 162:8, 162:22, 185:14 affected [2] - 162:6, 184:23 affixed [1] - 210:4 African [4] - 185:13, 192:15, 192:18, 192:20 African-American [3] - 185:13, 192:15, 192:20 African-Americans [1] - 192:18 afternoon [4] - 142:14, 144:6, 144:7, 209:8 age [1] - 142:2 agenda [1] - 141:10 ago [2] - 182:7, 186:17 agreed [1] - 197:14 ahead [1] - 148:7 aided [1] - 209:17 al [4] - 142:3, 142:5, 142:21, 142:24 Allis [6] - 199:18, 199:20, 199:21, 199:23, 200:3, 200:7 allocated [2] - 159:18, 163:18</p>	<p>allow [2] - 169:12, 196:18 allowed [1] - 188:18 almost [1] - 204:23 alternative [2] - 161:21, 186:1 Alvin [2] - 142:3, 142:21 ALVIN [1] - 139:3 amend [1] - 183:17 Amendment [1] - 141:19 amendment [17] - 141:21, 187:14, 187:19, 189:1, 199:6, 204:1, 204:2, 204:13, 204:15, 205:4, 205:19, 206:1, 206:4, 206:10, 206:15, 206:17 amendments [3] - 184:4, 198:20, 198:23 American [3] - 185:13, 192:15, 192:20 Americans [1] - 192:18 amount [1] - 171:9 AMY [1] - 139:7 analysis [3] - 184:7, 191:17, 201:1 analyze [5] - 173:7, 185:22, 192:4, 194:18, 200:22 analyzing [1] - 199:4 announcements [1] - 171:8 answer [1] - 196:7 answered [2] - 182:20, 196:7 anticipated [1] - 178:15 apologize [1] - 149:2 appear [1] - 203:5 appearing [5] - 142:20, 142:23, 143:4, 143:8, 143:11 appreciate [2] - 144:8, 144:23 approach [1] - 172:14 approached [1] - 160:20 approaches [1] - 169:6 approved [1] - 204:17 area [6] - 156:19, 157:8, 163:24, 184:24, 185:12, 199:8</p>
--	---	--	---	--

<p>argument ^[1] - 184:22</p> <p>array ^[1] - 166:2</p> <p>arrived ^[1] - 154:13</p> <p>assembly ^[20] - 151:25, 154:12, 159:8, 159:9, 159:11, 159:16, 159:18, 163:1, 170:15, 170:23, 171:22, 175:25, 176:14, 188:3, 188:4, 190:12, 205:4, 206:1, 206:4, 206:10</p> <p>Assembly ^[2] - 141:19, 141:21</p> <p>assertion ^[1] - 180:22</p> <p>assigned ^[3] - 174:16, 182:10, 205:8</p> <p>assist ^[1] - 163:20</p> <p>assistance ^[3] - 165:7, 200:25</p> <p>Assistant ^[1] - 143:3</p> <p>assume ^[8] - 146:5, 146:25, 157:17, 167:24, 195:9, 200:19, 206:18, 207:8</p> <p>assumption ^[1] - 171:18</p> <p>assured ^[1] - 170:11</p> <p>attached ^[3] - 141:23, 145:8, 146:5</p> <p>attaching ^[1] - 141:10</p> <p>attachments ^[1] - 150:15</p> <p>attempt ^[4] - 173:4, 186:24, 195:16, 196:12</p> <p>attempting ^[4] - 150:13, 172:12, 181:18, 191:21</p> <p>attend ^[2] - 156:11, 157:16</p> <p>attended ^[1] - 157:17</p> <p>attending ^[1] - 175:23</p> <p>attention ^[1] - 144:15</p> <p>Attorney ^[6] - 141:25, 142:19, 142:22, 143:3, 143:6, 143:9</p> <p>attorney ^[4] - 157:2, 163:19, 209:22, 209:25</p> <p>attorneys ^[4] - 154:15, 157:7, 179:25, 187:1</p> <p>Attorneys ^[5] -</p>	<p>142:11, 142:19, 143:7, 143:10, 209:9</p> <p>August ^[1] - 204:18</p> <p>author ^[2] - 146:10, 206:18</p> <p>authorities ^[2] - 146:19, 150:18</p> <p>authors ^[1] - 145:24</p> <p>AutoBound ^[3] - 153:13, 156:11, 157:16</p> <p>available ^[10] - 153:22, 153:23, 157:24, 166:9, 167:5, 192:22, 196:23, 197:9, 200:21</p> <p>Avenue ^[1] - 142:23</p> <p>awakening ^[1] - 154:9</p> <p>aware ^[3] - 146:3, 194:2, 198:8</p>	<p>142:20, 142:24, 143:4, 143:8, 143:11</p> <p>BELL ^[1] - 139:7</p> <p>Beloit ^[1] - 185:2</p> <p>benefit ^[1] - 163:22</p> <p>benefited ^[1] - 196:3</p> <p>Bernard ^[1] - 174:21</p> <p>best ^[14] - 144:9, 172:15, 176:8, 176:20, 178:21, 179:19, 180:24, 181:17, 182:6, 182:18, 194:6, 200:23, 205:21, 206:13</p> <p>better ^[4] - 161:5, 172:16, 172:19, 201:12</p> <p>between ^[8] - 141:11, 141:13, 141:17, 156:22, 156:24, 161:9, 182:8, 206:10</p> <p>beyond ^[1] - 204:2</p> <p>BIENDSEIL ^[1] - 139:3</p> <p>bigger ^[1] - 195:13</p> <p>bill ^[29] - 145:13, 145:19, 145:23, 145:25, 146:4, 147:12, 149:16, 149:25, 150:3, 150:5, 150:6, 150:12, 165:23, 171:7, 198:21, 203:24, 204:11, 204:20, 205:5, 205:17, 205:18, 205:24, 206:2, 206:5, 206:15, 207:11, 207:18</p> <p>Bill ^[5] - 141:18, 141:19, 141:20, 141:21, 206:11</p> <p>bills ^[9] - 145:9, 146:7, 146:17, 148:10, 156:7, 166:10, 181:20, 206:8, 207:13</p> <p>bipartisan ^[2] - 153:1, 181:16</p> <p>bit ^[2] - 145:7, 148:16</p> <p>blatant ^[2] - 195:15, 196:11</p> <p>blush ^[1] - 148:1</p> <p>Board ^[5] - 139:14, 140:2, 140:13, 140:16, 142:5</p> <p>board ^[1] - 183:21</p> <p>body ^[2] - 145:5,</p>	<p>146:16</p> <p>BOERNER ^[1] - 143:6</p> <p>boilerplate ^[2] - 146:8, 147:16</p> <p>BOONE ^[2] - 139:4</p> <p>bottom ^[1] - 167:18</p> <p>boundaries ^[2] - 146:20, 150:19</p> <p>Box ^[1] - 143:10</p> <p>BOYNTON ^[2] - 142:22, 208:7</p> <p>BRENNAN ^[2] - 139:15, 140:14</p> <p>BRETT ^[1] - 139:5</p> <p>bring ^[1] - 199:5</p> <p>brings ^[1] - 162:23</p> <p>brought ^[2] - 144:14, 170:14</p> <p>BROWN ^[1] - 142:19</p> <p>budget ^[7] - 163:11, 166:8, 171:7, 171:8, 177:15, 177:16</p> <p>bullet ^[8] - 176:4, 183:2, 187:6, 189:19, 189:25, 190:5, 195:11, 196:24</p> <p>BUMPUS ^[1] - 139:4</p> <p>bureau ^[4] - 146:15, 157:6, 205:8</p> <p>business ^[1] - 182:7</p>	<p>171:13, 171:23, 172:4, 172:13, 172:18, 172:21, 172:23, 175:25, 176:15, 183:3, 183:4, 183:7, 183:23, 185:20, 186:6, 186:13, 186:16, 186:18, 186:19, 188:3, 188:5, 188:9, 188:15, 188:17, 188:19, 190:13, 197:6, 200:11</p> <p>caucuses ^[3] - 188:11, 188:12, 188:13</p> <p>cautious ^[1] - 160:22</p> <p>CC ^[1] - 203:3</p> <p>CDVS ^[1] - 143:14</p> <p>CECELIA ^[1] - 139:7</p> <p>census ^[1] - 194:22</p> <p>centered ^[1] - 199:18</p> <p>certain ^[1] - 145:16</p> <p>certainly ^[2] - 204:23, 206:6</p> <p>certify ^[2] - 209:6, 209:21</p> <p>challenges ^[1] - 161:23</p> <p>change ^[4] - 183:18, 196:8, 199:7, 199:14</p> <p>chart ^[1] - 174:5</p> <p>check ^[1] - 202:15</p> <p>chief ^[4] - 155:21, 156:14, 156:20, 168:1</p> <p>choose ^[1] - 148:13</p> <p>chose ^[1] - 169:23</p> <p>Chris ^[1] - 180:14</p> <p>CINDY ^[1] - 139:3</p> <p>circles ^[1] - 151:10</p> <p>circulating ^[1] - 166:13</p> <p>circumstances ^[1] - 203:9</p> <p>cities ^[1] - 171:20</p> <p>City ^[2] - 142:12, 209:10</p> <p>city ^[2] - 183:21, 193:12</p> <p>claim ^[1] - 195:3</p> <p>CLARENCE ^[1] - 139:5</p> <p>clause ^[1] - 145:24</p> <p>clear ^[7] - 146:3, 146:9, 147:5, 147:12, 147:14, 170:10, 196:16</p> <p>clearer ^[1] - 148:6</p> <p>CLEEREMAN ^[1] - 139:4</p>	
	<p>B</p>		<p>C</p>		
	<p>Baldus ^[2] - 142:3, 142:21</p> <p>BALDUS ^[1] - 139:3</p> <p>BALDWIN ^[1] - 139:10</p> <p>BARBERA ^[1] - 139:3</p> <p>BARCA ^[4] - 139:20, 141:3, 142:1, 209:12</p> <p>Barca ^[9] - 141:15, 143:11, 144:6, 144:18, 145:2, 152:12, 167:7, 173:13, 207:2</p> <p>barca ^[1] - 203:14</p> <p>bargaining ^[1] - 171:5</p> <p>BARLAND ^[2] - 139:16, 140:15</p> <p>base ^[1] - 167:13</p> <p>based ^[12] - 177:1, 178:13, 178:15, 179:5, 179:21, 180:1, 189:15, 193:8, 193:9, 196:6, 197:8, 206:7</p> <p>basic ^[2] - 192:20, 194:1</p> <p>basing ^[1] - 182:23</p> <p>basis ^[1] - 150:7</p> <p>bear ^[1] - 162:23</p> <p>BECHEN ^[1] - 139:3</p> <p>beginning ^[1] - 151:21</p> <p>begins ^[1] - 150:2</p> <p>behalf ^[6] - 142:2,</p>			<p>campaign ^[1] - 185:22</p> <p>Campbell ^[1] - 143:14</p> <p>CANE ^[2] - 139:15, 140:14</p> <p>capacity ^[3] - 139:14, 140:13, 173:10</p> <p>Caption ^[1] - 139:17</p> <p>carefully ^[1] - 209:16</p> <p>CARLENE ^[1] - 139:3</p> <p>case ^[3] - 175:11, 175:19, 194:7</p> <p>Case ^[1] - 140:11</p> <p>Cathy ^[5] - 141:12, 141:14, 158:12, 167:13, 168:10</p> <p>caucus ^[43] - 159:14, 160:2, 160:12, 160:19, 160:20, 162:12, 162:13, 163:1, 163:16, 164:11, 165:3, 165:12, 170:13, 170:16, 170:24,</p>	

<p>close [3] - 150:13, 179:7, 187:15</p> <p>closed [3] - 188:13, 188:17, 188:18</p> <p>closely [2] - 157:18, 171:7</p> <p>co [1] - 206:20</p> <p>co-sponsor [1] - 206:20</p> <p>coalition [1] - 185:23</p> <p>COCHRAN [1] - 139:4</p> <p>coherent [1] - 184:22</p> <p>collective [1] - 171:5</p> <p>combined [1] - 175:22</p> <p>comfortable [1] - 165:3</p> <p>coming [11] - 167:20, 168:16, 176:23, 177:18, 178:15, 178:18, 179:10, 179:23, 181:20, 181:21, 182:14</p> <p>commencing [1] - 142:14</p> <p>commission [1] - 210:9</p> <p>commissioned [1] - 209:5</p> <p>committee [3] - 149:7, 154:12, 195:6</p> <p>common [3] - 147:1, 147:21, 152:23</p> <p>commonly [4] - 147:3, 150:9, 155:18, 204:9</p> <p>community [20] - 162:3, 162:20, 177:5, 177:8, 177:12, 179:12, 181:6, 182:3, 185:3, 185:5, 185:9, 185:10, 189:14, 191:11, 191:19, 192:8, 193:7, 193:25, 194:20, 199:24</p> <p>community's [1] - 194:4</p> <p>company [1] - 145:1</p> <p>Company [1] - 143:14</p> <p>compared [1] - 203:1</p> <p>complained [1] - 170:18</p> <p>complaints [1] - 170:22</p> <p>completely [2] - 145:16, 147:20</p> <p>computer [6] -</p>	<p>168:13, 169:13, 170:16, 170:24, 200:9, 209:17</p> <p>computer-aided [1] - 209:17</p> <p>concept [1] - 146:1</p> <p>concern [7] - 160:11, 160:14, 161:6, 169:12, 169:16, 177:10, 189:5</p> <p>concerned [4] - 162:14, 162:17, 164:2, 185:14</p> <p>concerning [1] - 209:14</p> <p>concerns [5] - 161:11, 161:12, 169:14, 178:12, 181:4</p> <p>concert [1] - 172:12</p> <p>conclusion [2] - 166:23, 196:5</p> <p>conclusions [1] - 194:24</p> <p>confidence [2] - 167:1, 184:10</p> <p>confident [1] - 187:4</p> <p>confidential [2] - 183:4, 183:8</p> <p>conform [2] - 146:19, 150:19</p> <p>congressional [8] - 145:9, 145:13, 146:6, 146:20, 148:9, 149:15, 149:24, 150:20</p> <p>consensus [4] - 167:21, 168:17, 169:24, 170:4</p> <p>consider [2] - 149:11, 191:10</p> <p>considerable [1] - 160:11</p> <p>consideration [2] - 163:14, 164:24</p> <p>constituents [1] - 162:19</p> <p>constitutional [11] - 164:7, 165:19, 177:3, 184:11, 187:5, 191:1, 191:24, 192:12, 192:13, 193:12, 193:14</p> <p>constitutionally [1] - 161:20</p> <p>consultant [1] - 168:7</p> <p>consultants [3] - 154:15, 163:20, 187:2</p> <p>contacted [1] - 198:19</p>	<p>contain [1] - 145:15</p> <p>contemplated [1] - 148:19</p> <p>contemplating [1] - 148:11</p> <p>contents [1] - 198:8</p> <p>context [2] - 145:18, 146:2</p> <p>continually [1] - 181:18</p> <p>Continued [2] - 139:17, 143:1</p> <p>continuing [1] - 146:16</p> <p>contractor [1] - 168:7</p> <p>controversy [1] - 209:15</p> <p>conversation [1] - 181:3</p> <p>conversations [6] - 165:21, 165:22, 166:1, 168:10, 197:1, 197:5</p> <p>conviction [1] - 193:13</p> <p>convincing [1] - 191:13</p> <p>copied [2] - 202:23, 203:8</p> <p>copies [2] - 141:23, 181:19</p> <p>copy [3] - 203:17, 203:25, 205:3</p> <p>cordial [1] - 169:17</p> <p>core [1] - 192:21</p> <p>correct [9] - 151:6, 152:11, 159:20, 168:9, 174:4, 174:9, 176:1, 198:13, 207:7</p> <p>correctly [1] - 168:19</p> <p>cost [1] - 197:18</p> <p>council [1] - 183:21</p> <p>counsel [6] - 141:23, 154:19, 157:6, 163:21, 209:22, 209:25</p> <p>Counsel [2] - 140:1, 140:16</p> <p>counties [1] - 171:20</p> <p>COUNTY [1] - 209:2</p> <p>county [3] - 183:21, 193:11, 193:12</p> <p>County [2] - 142:12, 209:10</p> <p>couple [6] - 157:13, 166:11, 169:14, 172:11, 184:3, 206:23</p> <p>course [16] - 145:20, 148:13, 156:24,</p>	<p>161:17, 163:17, 164:1, 165:1, 165:15, 172:1, 181:10, 181:18, 182:13, 184:18, 185:10, 187:21, 193:4</p> <p>courses [1] - 184:16</p> <p>COURT [2] - 139:1, 144:18</p> <p>court [1] - 192:16</p> <p>Court [1] - 142:6</p> <p>courts [2] - 192:9, 192:24</p> <p>created [1] - 171:24</p> <p>creating [2] - 147:19, 147:24</p> <p>creation [1] - 147:9</p> <p>credible [2] - 161:23, 199:5</p> <p>criteria [1] - 162:23</p> <p>cut [2] - 171:9, 171:10</p> <p style="text-align: center;">D</p> <p>DANE [1] - 209:2</p> <p>Dane [2] - 142:12, 209:11</p> <p>DANIEL [1] - 143:6</p> <p>Daniel [1] - 141:25</p> <p>data [3] - 158:19, 195:2, 195:5</p> <p>date [7] - 148:23, 155:3, 156:24, 167:15, 174:1, 177:13, 181:7</p> <p>dated [9] - 141:8, 141:9, 141:11, 141:13, 141:15, 141:17, 151:21, 153:25, 158:14</p> <p>dates [1] - 156:22</p> <p>DAVID [2] - 139:15, 140:14</p> <p>DAVIS [1] - 139:5</p> <p>days [5] - 155:7, 156:3, 166:12, 177:17, 204:13</p> <p>De [1] - 142:24</p> <p>DE [1] - 140:8</p> <p>December [3] - 148:23, 151:22, 152:1</p> <p>decide [6] - 159:3, 159:13, 159:17, 159:21, 170:7, 175:7</p> <p>decided [10] - 154:13, 159:22, 167:3, 167:4, 170:4, 173:3, 175:3, 184:7,</p>	<p>184:11, 190:16</p> <p>decision [5] - 170:2, 170:3, 183:14, 190:11, 191:22</p> <p>decisions [2] - 156:15, 192:16</p> <p>dedicate [1] - 171:14</p> <p>Defendants [5] - 140:3, 140:6, 140:17, 143:4, 143:8</p> <p>define [1] - 163:4</p> <p>definitely [1] - 148:20</p> <p>definition [3] - 147:1, 150:4, 184:1</p> <p>degree [2] - 163:15, 173:8</p> <p>DEININGER [2] - 139:15, 140:14</p> <p>deliberately [1] - 163:17</p> <p>democracy [1] - 185:22</p> <p>democrat [2] - 152:10, 207:22</p> <p>democratic [16] - 159:13, 162:12, 163:1, 170:16, 170:24, 171:22, 175:25, 176:15, 178:1, 188:3, 188:4, 188:12, 188:14, 190:12, 197:6, 207:17</p> <p>democrats [13] - 152:1, 152:2, 154:15, 159:9, 159:11, 159:19, 187:7, 187:11, 189:20, 189:23, 191:3, 191:18</p> <p>demographically [1] - 194:18</p> <p>DEPARTMENT [1] - 143:3</p> <p>deploying [1] - 158:20</p> <p>deposition [5] - 141:24, 144:16, 149:2, 209:18, 209:24</p> <p>DEPOSITION [2] - 139:19, 142:1</p> <p>derogation [1] - 147:14</p> <p>describe [3] - 169:17, 185:24, 204:8</p> <p>Description [1] - 141:7</p> <p>descriptions [1] - 145:16</p> <p>details [5] - 156:5, 194:17, 195:8,</p>
--	---	--	---	--

<p>198:25, 199:17 determine [1] - 178:23 determined [1] - 176:24 DEUREN [1] - 143:6 develop [2] - 186:19, 190:24 developed [2] - 151:18, 187:22 developing [2] - 153:9, 178:13 devise [1] - 192:12 devised [2] - 183:21, 193:14 differences [1] - 206:9 different [8] - 160:20, 161:3, 164:8, 166:2, 169:6, 172:11, 180:19 differently [3] - 147:2, 147:23, 148:16 diluted [3] - 192:8, 193:2, 194:5 direct [2] - 155:13, 156:10 direction [2] - 151:5, 151:11 directly [2] - 203:2, 203:10 Director [2] - 140:1, 140:15 disclose [1] - 183:13 discuss [1] - 174:8 discussed [6] - 156:25, 169:9, 176:14, 184:15, 185:19, 204:1 discussing [4] - 153:7, 180:20, 188:20, 207:5 discussion [6] - 177:5, 184:14, 185:15, 187:7, 187:10, 188:25 discussions [4] - 153:10, 153:12, 156:20, 165:15 disenfranchise [2] - 177:12, 193:22 disenfranchised [2] - 189:14, 193:24 disenfranchisemen t [1] - 201:13 disposal [1] - 157:4 dissected [1] - 200:22 DISTRICT [2] - 139:1, 139:1</p>	<p>district [18] - 146:21, 147:9, 150:20, 161:13, 162:8, 185:7, 185:8, 192:18, 192:20, 199:3, 199:8, 199:9, 199:11, 199:14, 199:17, 199:22, 199:23, 200:1 District [2] - 142:6, 142:7 districts [2] - 162:15, 184:22 diverse [1] - 149:20 divide [6] - 146:21, 147:2, 147:10, 148:4, 150:21, 191:19 divided [1] - 151:16 dividing [6] - 147:5, 147:21, 147:23, 185:3, 185:5, 191:11 divisive [2] - 195:15, 196:9 divvied [1] - 175:20 document [9] - 146:2, 152:16, 158:6, 167:10, 173:16, 181:9, 198:5, 203:20, 205:16 documentary [1] - 181:14 documents [1] - 202:15 done [10] - 151:19, 154:6, 154:18, 155:4, 161:20, 197:17, 200:23, 201:7, 201:12, 208:10 Donna [1] - 175:2 doubt [3] - 171:1, 202:19 down [2] - 163:16, 204:16 Doyle [1] - 152:9 DPW [1] - 140:12 draft [1] - 190:22 drafted [4] - 148:17, 150:12, 151:3, 151:17 drafting [4] - 146:14, 150:2, 150:5, 198:20 drafts [1] - 145:15 draw [26] - 160:10, 160:23, 161:7, 161:8, 161:12, 161:13, 163:7, 163:25, 164:1, 164:3, 164:6, 165:8, 165:13, 165:18, 166:17, 172:3, 172:5, 172:6, 172:10, 172:17, 173:6, 173:11, 177:11,</p>	<p>186:11, 186:13 drawing [9] - 160:15, 161:9, 162:2, 163:5, 164:13, 164:14, 171:20, 172:8, 172:22 drawn [1] - 160:13 draws [1] - 164:13 drew [2] - 149:6, 149:7 drop [1] - 179:8 due [1] - 164:24 DUFFY [1] - 140:5 duly [2] - 209:4, 209:12 during [6] - 154:21, 163:13, 166:7, 166:18, 186:17, 197:12 DUSTIN [1] - 142:19</p> <p style="text-align: center;">E</p> <p>E-mail [3] - 141:8, 141:9, 141:15 e-mail [23] - 145:6, 146:16, 150:15, 151:21, 153:25, 158:8, 158:9, 158:10, 167:11, 167:14, 167:15, 167:18, 168:11, 174:1, 198:7, 198:9, 198:18, 201:18, 201:20, 201:25, 202:2, 202:10 E-mails [3] - 141:11, 141:13, 141:17 easier [1] - 192:11 East [3] - 142:11, 142:20, 209:10 EASTERN [1] - 139:1 Eastern [1] - 142:7 easy [2] - 192:23, 193:16 ECKSTEIN [1] - 139:5 educated [1] - 156:18 education [1] - 171:10 Egerer [9] - 141:12, 141:14, 141:17, 143:13, 155:15, 157:17, 158:11, 180:14, 198:19 Egerer's [1] - 200:8 eight [3] - 155:7, 155:9, 156:3 eight-day [1] - 155:9 Eighties [2] - 207:25,</p>	<p>208:1 elected [3] - 154:3, 162:9, 162:16 election [3] - 152:2, 177:25, 194:9 elections [3] - 196:1, 196:14, 196:17 ELVIRA [1] - 139:4 employed [2] - 209:22, 210:1 employee [1] - 209:25 empty [1] - 169:4 enable [1] - 194:12 energy [2] - 157:13, 171:14 enjoy [1] - 145:1 enormous [1] - 171:11 ensure [4] - 194:13, 196:2, 196:18, 197:20 equal [1] - 175:8 equipment [6] - 153:8, 168:14, 168:25, 169:2, 169:22, 171:15 ERICA [1] - 140:9 especially [6] - 148:8, 187:8, 188:21, 188:23, 188:25, 189:22 et [4] - 142:3, 142:5, 142:21, 142:24 EVANJELINA [1] - 139:4 event [6] - 146:21, 148:12, 150:20, 151:4, 151:16, 178:1 events [1] - 206:7 eventually [4] - 147:10, 169:24, 170:4, 173:6 evidence [3] - 178:3, 181:14, 182:15 exact [1] - 152:7 exactly [9] - 177:13, 177:21, 178:10, 181:6, 189:11, 192:13, 200:23, 206:14, 207:21 Examination [1] - 141:4 examination [1] - 209:16 EXAMINATION [1] - 144:4 examined [1] - 209:16 examines [7] - 152:16, 158:6,</p>	<p>167:10, 173:16, 198:5, 203:20, 205:16 excuse [2] - 156:10, 181:12 Exhibit [18] - 144:1, 144:13, 145:3, 152:13, 158:1, 158:11, 167:8, 173:14, 174:6, 176:2, 182:10, 182:25, 198:1, 201:16, 203:2, 203:15, 205:12, 205:23 exhibit [2] - 146:10, 198:9 exhibits [1] - 141:23 expect [3] - 155:22, 157:10, 179:23 expected [1] - 155:2 experience [1] - 149:3 expert [3] - 149:12, 194:2, 194:25 expires [1] - 210:9 explain [1] - 145:6 extent [3] - 156:1, 172:7, 184:13 extremely [3] - 177:3, 179:11, 193:10</p> <p style="text-align: center;">F</p> <p>facility [1] - 173:2 fact [16] - 148:8, 150:9, 157:3, 164:2, 164:5, 166:18, 166:21, 169:20, 171:8, 171:17, 183:16, 184:10, 189:8, 194:14, 196:13, 197:5 factors [1] - 162:5 fair [1] - 191:23 fall [1] - 171:19 familiar [2] - 157:21, 173:23 far [1] - 197:18 fast [1] - 166:20 favorable [1] - 161:15 February [5] - 139:21, 142:13, 163:10, 209:8, 210:5 felt [6] - 165:17, 170:8, 172:17, 172:25, 173:5, 199:5 few [1] - 202:3 fight [1] - 183:19 File [1] - 139:12</p>
--	--	--	--	--

<p>filed [1] - 141:24 final [2] - 184:7, 191:17 financially [1] - 210:1 finish [1] - 181:11 finished [2] - 171:20, 182:19 FINLEY [1] - 209:3 Finley [2] - 139:22, 142:8 firm [1] - 193:13 first [22] - 144:16, 145:7, 148:1, 149:1, 154:8, 156:4, 157:13, 163:12, 166:5, 166:19, 169:14, 170:8, 172:25, 178:8, 178:11, 181:3, 183:2, 184:25, 198:9, 204:5, 204:12, 205:22 Fitzgerald [1] - 154:11 five [1] - 177:17 floor [4] - 165:22, 184:19, 187:13 focus [1] - 172:20 focused [1] - 157:12 follow [3] - 149:7, 155:2, 155:22 followed [2] - 149:9, 171:7 following [5] - 168:19, 182:14, 190:6, 206:3, 209:11 follows [1] - 204:22 forget [2] - 182:7, 185:22 format [1] - 205:7 forth [1] - 145:25 forward [10] - 148:23, 150:8, 154:17, 166:20, 170:14, 177:19, 178:16, 181:20, 181:22, 199:5 four [2] - 177:17, 200:4 frank [3] - 145:14, 146:9, 171:16 Fred [1] - 159:25 Fredonia [1] - 143:15 Friday [2] - 182:11, 182:24 Friedl [4] - 141:12, 141:14, 158:12, 167:13 front [1] - 205:10 FRONTERA [1] - 140:8</p>	<p>Frontera [1] - 142:24 full [2] - 165:8, 190:25 future [1] - 173:3</p> <p>G</p> <p>gain [2] - 170:17, 181:25 gather [1] - 181:19 General [3] - 140:1, 140:16, 143:3 generally [7] - 145:20, 149:11, 153:22, 168:21, 191:2, 192:10, 199:21 George [1] - 180:16 GERALD [2] - 139:15, 140:14 GIS [1] - 158:18 given [10] - 154:16, 155:22, 175:10, 180:18, 193:9, 193:17, 194:9, 194:14, 200:24, 209:19 GLADYS [1] - 139:6 GLORIA [1] - 139:7 Gmail [4] - 202:8, 202:11, 202:12, 202:16 goal [2] - 197:14, 199:22 Godfrey [2] - 142:11, 209:9 GODFREY [1] - 142:19 GOP [2] - 158:21, 195:14 governing [2] - 146:19, 150:18 Government [5] - 139:13, 140:2, 140:12, 140:16, 142:4 government [2] - 185:24, 197:18 governor [4] - 152:8, 204:18, 207:17, 207:18 governor's [1] - 171:6 grapevine [5] - 178:7, 178:14, 179:14, 179:17, 196:6 Gratz [1] - 168:8 gratz [1] - 168:9 group [6] - 149:20, 152:19, 152:25, 153:1, 153:4</p>	<p>groups [1] - 152:22 Groups [1] - 185:24 guess [7] - 155:6, 169:17, 170:1, 174:18, 179:24, 189:10, 190:16 guessing [3] - 175:11, 182:12, 200:22 GWENDOLYNNE [1] - 139:10</p> <p>H</p> <p>half [2] - 185:3, 185:5 hand [8] - 144:13, 152:12, 167:7, 173:13, 197:25, 203:14, 205:11, 210:4 handing [1] - 158:2 handle [1] - 156:18 hang [1] - 208:4 hard [1] - 186:16 head [4] - 146:14, 158:18, 168:5, 198:16 hear [1] - 208:5 heard [10] - 152:18, 152:21, 166:11, 166:16, 166:19, 178:6, 193:5, 194:19, 196:6, 201:6 hearing [8] - 179:5, 180:1, 181:4, 189:16, 193:4, 193:5, 195:5, 204:14 hearings [2] - 197:21, 200:19 Heather [1] - 143:15 hectic [1] - 144:9 held [1] - 199:21 Helen [2] - 174:23, 180:17 help [1] - 161:19 helpful [1] - 151:13 hereby [1] - 209:6 hereto [1] - 210:1 hereunto [1] - 210:3 herself [1] - 175:9 highest [1] - 171:9 himself [2] - 150:23, 151:18 hire [1] - 154:14 Hispanic [19] - 177:5, 177:8, 177:12, 181:6, 182:3, 185:10, 185:12, 189:14, 192:8, 192:9, 193:2, 193:7, 193:15, 194:7,</p>	<p>194:11, 194:13, 194:20, 194:23, 195:10 Hispanics [6] - 178:9, 179:12, 194:8, 194:14, 201:5, 201:6 historically [2] - 194:8, 199:18 history [9] - 141:19, 141:21, 171:4, 203:24, 204:7, 204:10, 204:20, 205:18, 205:24 holding [1] - 162:20 hope [3] - 160:21, 162:18, 197:15 hoped [2] - 191:8, 191:9 hotmail [1] - 202:6 HOUGH [1] - 139:5 house [1] - 207:22 houses [2] - 207:14, 207:16 Hulsey [1] - 206:16 hundred [1] - 185:1 hurt [2] - 179:12</p> <p>I</p> <p>idea [4] - 149:17, 149:21, 187:23, 190:1 ideas [2] - 169:7, 186:2 identical [1] - 206:6 identification [1] - 144:2 Identified [1] - 141:7 II [2] - 139:18, 142:1 III [1] - 139:5 illegitimate [2] - 162:14, 162:17 imagination [1] - 195:1 imagine [2] - 153:21, 206:16 immediate [1] - 185:8 implications [1] - 162:2 important [7] - 162:24, 165:20, 187:10, 188:21, 188:23, 188:25, 189:22 impossible [2] - 166:23, 167:4 improper [1] - 191:21 INC [1] - 140:8</p>	<p>Inc [1] - 142:24 independent [1] - 168:6 indicate [1] - 178:17 indicated [16] - 154:13, 163:8, 163:18, 164:12, 169:15, 172:1, 176:22, 177:14, 178:6, 181:3, 182:2, 182:5, 193:19, 197:11, 199:12, 203:11 indicating [3] - 158:16, 189:24, 191:2 indication [1] - 178:12 individually [1] - 186:15 influence [3] - 191:8, 191:21, 192:9 influencing [2] - 191:4, 191:5 information [12] - 179:9, 179:14, 179:22, 181:25, 182:21, 182:23, 185:25, 194:22, 197:9, 197:23, 202:17, 202:24 initial [1] - 160:9 initials [1] - 174:19 input [8] - 160:12, 160:24, 161:16, 161:24, 162:3, 163:1, 175:21, 195:25 insert [1] - 147:4 inserted [1] - 151:17 instance [10] - 162:4, 169:5, 183:11, 183:13, 183:19, 184:23, 192:7, 193:21, 194:11, 202:5 instances [1] - 172:12 instructed [1] - 173:11 instruction [1] - 160:9 instructions [2] - 160:5, 164:3 intact [1] - 199:25 intent [2] - 206:14, 206:19 intention [1] - 191:4 intentionally [1] - 161:13 interact [2] - 196:19, 197:22 interest [8] - 149:10,</p>
---	---	--	--	---

162:20, 176:8, 179:13, 181:17, 185:9, 193:25, 199:24 interested [1] - 210:2 interesting [2] - 164:15, 164:16 interests [8] - 162:3, 176:20, 179:19, 180:24, 182:18, 191:12, 191:20, 200:6 Intervenor [2] - 139:11, 140:6 Intervenor- Defendants [1] - 140:6 Intervenor- Plaintiffs [1] - 139:11 intricacies [1] - 160:3 intricate [1] - 149:8 introduced [2] - 156:7, 204:11 introducing [1] - 195:23 invite [1] - 180:19 invited [2] - 178:21, 188:2 involved [5] - 149:8, 160:4, 164:21, 177:8, 188:8 issue [6] - 149:12, 171:5, 183:19, 203:8, 203:12, 203:13 issues [4] - 156:21, 166:2, 171:11, 201:15 IT [1] - 155:16 itself [2] - 146:5, 147:25	JPS [1] - 140:12 JPS-DPW-RMD [1] - 140:12 JR [2] - 140:4, 140:4 judge [6] - 155:21, 158:12, 168:1, 174:25, 180:14, 201:18 Judge [3] - 141:12, 141:14, 141:16 judgment [2] - 156:17, 161:9 JUDY [1] - 139:7 july [1] - 210:10 July [10] - 166:9, 174:2, 176:17, 178:2, 187:22, 190:12, 195:12, 200:18, 200:21, 204:11 jump [1] - 148:1 June [1] - 163:11 JUSTICE [1] - 143:3	186:6 Kessler's [6] - 159:23, 168:15, 168:23, 170:6, 170:25, 200:10 KEVIN [2] - 140:1, 140:15 key [1] - 162:5 kind [8] - 150:22, 153:3, 156:16, 156:17, 157:9, 161:24, 181:9, 181:14 KIND [1] - 139:10 kinds [3] - 156:5, 156:15, 171:10 knowledge [5] - 160:1, 165:10, 173:8, 205:22, 209:14 known [1] - 192:21 KRESBACH [1] - 139:6 Krusick [1] - 204:3	197:15 leave [1] - 170:5 left [2] - 174:11, 182:21 Legal [1] - 143:14 legal [12] - 162:1, 164:8, 164:18, 164:24, 165:7, 167:5, 190:8, 190:19, 193:8, 193:17, 193:18, 200:24 legislative [26] - 141:18, 141:20, 145:8, 145:12, 145:19, 146:6, 146:14, 146:15, 146:20, 147:9, 148:9, 149:15, 149:24, 150:19, 154:18, 157:5, 157:6, 163:21, 199:21, 202:21, 204:6, 204:10, 204:20, 205:8, 205:18, 205:24 legislatively [1] - 207:24 legislator [1] - 149:9 legislator's [1] - 169:10 legislators [1] - 148:11 legislature [7] - 149:5, 161:3, 166:2, 171:4, 207:3, 207:10, 207:20 LESLIE [1] - 139:5 less [1] - 161:15 letter [1] - 155:10 level [1] - 193:11 liaison [1] - 155:17 line [3] - 145:7, 161:9, 204:16 lines [1] - 148:17 list [4] - 145:24, 149:22, 173:18, 174:7 listed [1] - 149:20 lists [1] - 173:19 live [3] - 194:23, 195:10, 199:20 local [1] - 197:18 locals [1] - 197:17 located [1] - 159:22 look [18] - 147:11, 152:14, 152:25, 158:1, 158:4, 163:16, 167:8, 173:14, 173:18, 173:23, 176:4, 182:25, 187:3, 190:3, 198:3, 203:16, 204:24	looked [4] - 148:14, 192:6, 199:1, 201:12 looking [7] - 147:22, 148:23, 194:21, 199:13, 200:6, 200:17, 205:1 looks [4] - 153:1, 205:6, 205:19, 205:20 losing [1] - 166:15 lost [2] - 152:1, 196:2 lower [1] - 158:11 LRB [2] - 198:20, 199:4 LTSB [7] - 153:7, 153:21, 154:22, 155:18, 157:19, 158:16, 158:18
	K	L		M
J	Kahn [2] - 142:11, 209:9 KAHN [1] - 142:19 keep [8] - 183:4, 183:7, 187:14, 187:25, 188:25, 193:25, 199:23, 205:10 Kelda [2] - 174:23, 180:17 Kelly [2] - 141:25, 144:5 KELLY [6] - 143:6, 144:14, 206:22, 208:2, 208:4, 208:9 kelly [2] - 141:4, 207:1 KENNEDY [2] - 140:1, 140:15 Kenosha [2] - 184:24, 185:2 Kenosha-Racine [1] - 184:24 kept [1] - 199:24 Kessler [20] - 159:25, 160:7, 160:14, 161:1, 161:12, 163:25, 164:10, 164:18, 164:23, 165:9, 165:13, 166:17, 168:3, 169:12, 169:19, 170:11, 172:1, 172:9, 172:22,	LA [1] - 140:8 Lane [1] - 143:15 LANGE [1] - 139:6 language [13] - 146:8, 146:18, 147:4, 147:8, 147:16, 148:3, 148:22, 148:25, 150:17, 150:22, 151:12, 151:15, 151:17 large [1] - 193:22 last [8] - 163:8, 163:9, 168:12, 184:24, 196:24, 204:1, 204:16, 207:2 Law [6] - 142:11, 142:19, 142:22, 143:7, 143:10, 209:9 law [2] - 188:16, 188:20 LAW [1] - 143:10 lawful [1] - 142:2 LAZAR [1] - 143:3 lead [1] - 206:18 leader [6] - 154:3, 154:9, 158:25, 159:1, 159:13, 159:17 leadership [3] - 173:22, 180:11 leaked [1] - 177:1 learn [2] - 171:14, 192:4 learned [1] - 177:13 least [2] - 172:13,		Madison [5] - 139:21, 142:12, 142:20, 143:4, 209:10 mail [26] - 141:8, 141:9, 141:15, 145:6, 146:16, 150:15, 151:21, 153:25, 158:8, 158:9, 158:10, 167:11, 167:14, 167:15, 167:18, 168:11, 174:1, 198:7, 198:9, 198:18, 201:18, 201:20, 201:25, 202:2, 202:10 mails [3] - 141:11, 141:13, 141:17 Main [4] - 142:11, 142:20, 143:4, 209:10 majority [7] - 151:24, 151:25, 152:3, 152:6, 166:15, 194:12, 196:2 manner [1] - 149:8 MANZANET [1] - 139:6 map [78] - 147:9, 149:6, 161:7, 161:21, 161:23, 162:6, 163:2, 163:5, 163:7, 164:6, 164:23, 165:13, 165:18, 166:6, 166:17, 170:14, 172:5, 172:6, 172:23, 173:5, 173:6, 176:6, 176:17, 176:23, 177:11, 177:19, 178:20, 178:22, 179:1, 179:8, 179:10, 179:17, 180:23, 181:15, 183:15,

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

<p>183:17, 184:8, 184:12, 185:25, 186:11, 186:13, 186:19, 186:21, 187:4, 189:8, 189:11, 189:18, 190:3, 190:7, 190:13, 190:22, 190:23, 190:25, 191:4, 191:5, 191:23, 191:24, 192:1, 192:6, 193:1, 193:2, 193:16, 193:23, 195:3, 195:14, 195:20, 195:23, 196:3, 196:22, 200:20, 201:2, 207:4, 207:25 maps [28] - 160:10, 160:13, 160:23, 162:21, 163:25, 164:1, 164:13, 164:14, 164:21, 167:1, 171:19, 171:21, 171:23, 172:3, 172:8, 172:10, 172:17, 173:11, 178:3, 178:18, 181:21, 182:16, 192:4, 193:12, 193:15, 197:17, 197:19 March [2] - 158:14, 167:15 marginal [1] - 163:22 MARIA [1] - 143:3 marked [9] - 144:1, 144:13, 145:2, 152:13, 167:8, 173:14, 198:1, 203:15, 205:12 Marshfield [1] - 185:4 material [2] - 203:10, 203:18 Matt [11] - 141:12, 141:14, 141:17, 155:15, 157:17, 158:11, 158:16, 167:14, 167:18, 180:14, 198:19 matter [2] - 164:5, 166:18 matters [1] - 209:14 Matthew [1] - 143:13 maximize [1] - 193:21 MAXINE [1] - 139:5 McKinney [1] - 180:14 mean [68] - 145:14, 145:17, 145:20,</p>	<p>145:22, 145:25, 146:4, 147:1, 147:11, 147:13, 147:21, 147:25, 148:10, 149:19, 150:5, 151:7, 151:9, 151:11, 152:21, 152:22, 153:2, 153:5, 153:10, 153:20, 154:8, 155:23, 156:1, 156:2, 156:3, 156:12, 156:22, 156:24, 158:7, 159:6, 160:7, 164:5, 171:3, 171:25, 172:6, 172:11, 178:6, 178:20, 180:4, 180:7, 180:17, 181:2, 181:3, 183:9, 183:25, 184:1, 188:5, 190:19, 191:6, 191:17, 192:20, 195:8, 196:20, 199:12, 200:16, 200:17, 201:3, 201:14, 203:23, 204:9, 204:21, 207:5, 207:12 meaning [2] - 146:17, 190:21 means [2] - 146:24, 146:25 meet [4] - 187:5, 188:11, 190:25, 194:15 meeting [12] - 141:10, 154:11, 154:21, 154:24, 175:16, 175:23, 180:10, 180:19, 182:22, 183:3, 186:17, 188:19 meetings [13] - 162:25, 163:6, 180:5, 183:23, 184:3, 185:20, 186:7, 186:19, 188:3, 188:9, 188:16, 188:17 member [3] - 161:14, 162:22, 173:9 members [27] - 156:6, 160:12, 160:13, 160:19, 160:20, 161:24, 162:14, 162:18, 162:25, 163:16, 164:11, 165:2, 169:1, 169:6, 170:15, 171:13, 171:22, 172:18, 172:23, 174:15, 175:4, 175:25, 176:14,</p>	<p>185:13, 188:2, 197:1, 197:6 Members [3] - 139:13, 140:12, 142:4 memorandums [1] - 183:11 memory [1] - 171:2 mentioned [3] - 184:24, 186:12, 193:16 message [5] - 176:6, 185:17, 190:8, 190:19, 195:13 met [3] - 192:24, 194:16, 204:2 Michael [1] - 178:21 MICHAEL [2] - 139:15, 140:14 Middleton [1] - 143:10 might [45] - 144:17, 147:9, 147:20, 148:4, 148:12, 148:14, 150:5, 151:13, 160:16, 161:6, 161:7, 161:12, 162:15, 165:23, 166:11, 166:12, 166:13, 166:20, 166:22, 169:9, 170:10, 172:2, 172:14, 177:1, 177:9, 177:19, 177:24, 181:15, 183:16, 184:2, 187:7, 187:11, 187:16, 187:24, 189:1, 189:7, 189:20, 189:23, 190:3, 192:19, 199:6, 200:19 Miller [16] - 141:8, 141:10, 146:11, 147:15, 149:14, 150:17, 150:23, 151:18, 158:24, 159:12, 166:21, 172:13, 196:25, 197:4, 197:11, 197:14 miller [1] - 158:21 Milwaukee [3] - 142:23, 143:7, 181:23 mind [2] - 163:12, 169:3 minds [2] - 162:11, 162:12 minority [9] - 154:3, 154:9, 158:24, 159:1, 159:12, 159:17, 185:14, 193:21, 194:4 minute [1] - 154:25 minutes [1] - 206:23 mistake [2] - 168:18,</p>	<p>168:22 modifying [1] - 199:11 moment [4] - 152:14, 201:16, 205:11, 205:14 money [1] - 197:19 months [2] - 182:6, 186:16 MOORE [2] - 139:6, 139:10 most [8] - 157:12, 159:25, 160:2, 163:13, 164:10, 171:3, 173:2, 184:23 motion [1] - 157:1 move [3] - 150:8, 157:14, 177:19 moving [1] - 151:11 MR [5] - 144:14, 206:22, 208:2, 208:4, 208:9 MS [1] - 208:7 multiple [1] - 202:10 municipal [2] - 146:19, 150:18 municipality [1] - 148:18 must [5] - 175:10, 175:20, 176:24, 176:25, 179:6 N name [1] - 185:22 named [1] - 209:11 narrowly [1] - 163:4 necessarily [1] - 172:6 need [7] - 156:13, 159:2, 165:7, 183:4, 183:7, 195:11, 195:13 needed [1] - 191:1 neighborhoods [1] - 193:10 nervous [1] - 177:23 neutral [2] - 168:24, 169:3 never [4] - 153:20, 163:6, 175:21, 178:21 new [5] - 146:18, 147:20, 147:25, 156:6, 182:21 next [6] - 159:2, 187:6, 190:5, 195:11, 204:14, 204:24 NICHOL [2] - 139:15, 140:14 Nineties [2] - 149:6,</p>	<p>207:16 nobody [1] - 170:18 normally [2] - 175:14, 183:10 North [2] - 142:23, 143:7 Nos [1] - 144:1 notarial [1] - 210:4 Notary [3] - 142:9, 209:4, 210:7 notes [1] - 151:21 nothing [5] - 154:16, 179:14, 179:16, 208:2, 209:13 notice [1] - 141:10 notion [1] - 178:9 number [6] - 145:23, 174:16, 175:8, 180:7, 180:18, 194:8 numbers [2] - 173:18, 193:23 O oath [3] - 144:16, 144:20, 209:16 oblique [1] - 174:5 obviously [10] - 145:25, 149:9, 156:4, 156:25, 167:12, 169:20, 179:4, 186:15, 189:17, 196:20 occur [1] - 165:22 occurred [1] - 178:11 odd [1] - 175:5 OF [5] - 139:1, 143:3, 209:1, 209:2 offer [14] - 165:16, 183:11, 183:15, 183:17, 184:5, 184:11, 186:1, 186:21, 187:16, 187:20, 189:1, 206:14 offered [4] - 187:20, 204:13, 204:15, 206:17 offering [1] - 190:13 offhand [3] - 145:14, 186:9, 208:1 office [20] - 155:16, 156:3, 159:23, 168:15, 168:23, 169:5, 169:11, 169:21, 170:6, 170:9, 170:25, 180:13, 180:15, 180:17, 193:6, 198:11,</p>
---	--	---	---	--

<p>198:15, 198:17, 200:10, 203:11 OFFICE [1] - 143:10 offices [3] - 142:10, 178:21, 209:9 official [2] - 139:14, 140:13 oftentimes [1] - 148:10 OLGA [1] - 140:9 One [3] - 142:11, 142:20, 209:10 one [31] - 148:13, 150:2, 151:11, 152:23, 159:8, 161:4, 161:9, 161:22, 162:5, 168:12, 169:10, 169:15, 171:3, 173:1, 173:20, 176:11, 176:13, 180:9, 185:21, 192:18, 199:21, 200:5, 200:11, 201:3, 201:14, 202:20, 205:19, 206:17, 207:5, 207:22 open [6] - 160:23, 161:18, 188:6, 188:7, 188:10, 188:16 operating [1] - 171:18 opinions [1] - 165:16 opportunities [1] - 153:17 opposed [2] - 169:10, 206:11 option [2] - 154:18, 185:21 options [3] - 148:11, 184:15, 185:19 order [1] - 166:24 org [1] - 154:12 origin [1] - 194:23 original [4] - 141:23, 141:24, 158:9 otherwise [1] - 192:19 ourselves [1] - 184:12 outline [1] - 145:23 outright [1] - 147:18 outside [3] - 165:7, 174:11, 200:24 overall [1] - 197:15 overview [1] - 155:1 own [6] - 151:3, 151:8, 156:17, 162:23, 165:10, 172:5</p>	<p>P p.m [1] - 208:11 P.O [1] - 143:10 pack [1] - 192:17 page [3] - 176:2, 182:25, 183:2 Pages [1] - 141:2 pages [4] - 204:5, 204:24, 205:22, 206:3 paragraph [1] - 159:2 part [11] - 149:1, 158:11, 169:16, 171:6, 184:18, 185:6, 185:12, 185:16, 186:21, 188:14, 196:15 participate [2] - 186:6, 196:20 particular [8] - 151:15, 152:23, 155:24, 157:22, 169:9, 174:15, 177:6, 181:2 particularly [1] - 181:23 parties [2] - 209:23, 210:1 partisan [8] - 176:7, 176:20, 177:3, 179:11, 179:18, 180:24, 182:17, 188:20 parts [2] - 160:12, 200:4 party [4] - 151:24, 152:5, 196:4, 207:15 pass [4] - 166:14, 191:13, 195:24, 196:16 passage [1] - 206:8 passed [8] - 157:2, 163:11, 166:8, 177:15, 177:16, 207:3, 207:18 passing [1] - 190:7 past [2] - 150:12, 192:25 PAUL [1] - 140:4 pbarca7@yahoo. com [2] - 201:21, 203:3 PBS [1] - 174:19 PELLETTER [1] - 209:3 Pelletter [2] - 139:22, 142:8 pending [1] - 142:5</p>	<p>penny [1] - 174:21 people [46] - 149:20, 153:1, 153:22, 156:6, 160:1, 160:24, 161:1, 161:4, 161:5, 161:6, 161:10, 162:8, 165:16, 168:16, 168:25, 169:21, 171:2, 173:20, 174:7, 175:15, 175:24, 179:9, 180:7, 180:13, 180:18, 181:22, 181:24, 184:22, 186:3, 187:25, 189:18, 190:2, 192:22, 192:23, 193:5, 193:6, 193:9, 193:23, 193:24, 194:19, 194:23, 195:10, 196:19, 199:19, 201:4, 203:9 people's [5] - 162:10, 162:12, 169:16, 172:7, 173:18 per [3] - 150:10, 198:16, 199:25 percent [1] - 192:17 PEREZ [1] - 140:9 performing [1] - 194:12 perhaps [5] - 145:6, 148:15, 149:19, 169:5, 170:20 period [10] - 154:21, 155:9, 163:13, 184:8, 188:5, 188:6, 188:7, 188:14, 195:22, 196:15 periodically [1] - 197:12 person [11] - 155:16, 155:17, 155:19, 173:2, 174:10, 174:14, 175:17, 175:18, 180:9, 209:12 personal [3] - 201:25, 202:2, 203:10 personally [1] - 167:12 perspective [4] - 190:9, 190:19, 191:15, 191:16 PETER [3] - 141:3, 142:1, 209:12 peter [2] - 139:20, 167:19 Peter [3] - 141:15, 143:11, 167:23 PETRI [1] - 140:4 phone [1] - 173:18</p>	<p>picked [1] - 195:22 picture [1] - 195:13 place [1] - 196:1 Plaintiffs [8] - 139:9, 139:11, 140:10, 142:3, 142:4, 142:5, 142:21, 142:24 plan [2] - 148:4, 148:22 plans [4] - 146:21, 150:20, 150:21 plus [1] - 183:25 point [26] - 154:4, 168:5, 168:6, 172:17, 173:3, 173:22, 176:4, 177:4, 177:20, 179:7, 183:2, 183:15, 187:6, 187:20, 187:21, 189:8, 189:15, 189:19, 190:5, 190:17, 190:23, 195:11, 195:20, 196:21, 196:24, 200:17 points [8] - 173:17, 173:25, 174:8, 176:11, 176:13, 178:13, 197:16, 205:21 policy [1] - 149:12 political [8] - 176:7, 176:20, 179:2, 179:18, 180:23, 181:16, 182:17, 195:17 poorly [1] - 190:4 population [3] - 193:15, 194:7, 201:13 populations [1] - 192:15 Porter [1] - 143:14 position [1] - 198:14 positioning [3] - 190:8, 190:18, 191:14 possibility [1] - 199:13 possible [3] - 144:24, 184:16, 197:21 possibly [1] - 195:25 potential [2] - 181:20, 181:21 power [1] - 195:14 precedences [2] - 192:22, 193:8 precedes [1] - 208:3 precise [1] - 168:20 prepare [1] - 149:14 preparing [1] - 187:13</p>	<p>present [3] - 143:13, 186:8, 195:5 presented [1] - 195:6 press [6] - 187:8, 188:22, 188:24, 189:2, 189:22, 190:3 pretty [4] - 167:12, 190:16, 192:21, 196:16 previous [2] - 150:6, 154:17 previously [1] - 183:20 primarily [1] - 200:6 primary [1] - 203:13 principles [4] - 164:8, 165:20, 192:21, 194:1 probability [1] - 189:17 problem [1] - 201:11 problems [1] - 202:21 process [17] - 154:7, 154:23, 155:14, 160:1, 160:23, 161:17, 161:18, 163:16, 166:20, 176:6, 179:17, 183:18, 187:17, 196:20, 197:13, 197:22 processed [1] - 158:20 produce [2] - 147:15, 187:4 produced [2] - 203:18, 205:7 production [1] - 202:15 Professional [4] - 139:23, 142:9, 209:4, 210:8 program [5] - 153:12, 153:14, 153:23, 157:22, 157:23 programs [3] - 153:15, 153:18, 157:24 proper [1] - 205:6 properly [2] - 161:20, 165:8 proportion [1] - 195:10 propose [2] - 178:4, 189:12 proposed [3] - 166:17, 181:15, 182:16</p>
--	--	--	---	---

<p>Prospect ^[1] - 142:23 prospective ^[2] - 163:2, 163:5 provide ^[1] - 201:1 provided ^[1] - 141:23 providers ^[1] - 202:4 provides ^[1] - 147:8 Public ^[3] - 142:9, 209:4, 210:7 public ^[12] - 154:19, 171:10, 188:2, 188:6, 188:7, 188:10, 189:2, 196:19, 196:23, 197:21, 200:18, 204:14 publicly ^[2] - 166:9, 200:21 published ^[2] - 204:17, 204:18 pulled ^[1] - 162:4 purpose ^[1] - 202:25 pursuant ^[2] - 142:7, 209:6 push ^[1] - 166:25 put ^[12] - 148:22, 150:24, 153:15, 154:17, 168:14, 168:24, 170:5, 170:9, 170:10, 170:25, 173:4, 173:24</p> <p>Q</p>	<p>182:2 read ^[2] - 158:17, 204:12 reading ^[2] - 147:18, 209:20 ready ^[3] - 156:8, 183:13, 188:1 really ^[10] - 149:13, 154:8, 163:14, 163:23, 165:17, 165:18, 166:23, 177:11, 186:25, 189:9 reasons ^[1] - 173:10 receive ^[2] - 170:22, 202:22 received ^[2] - 182:15, 202:14 recess ^[1] - 165:24 Recess ^[1] - 206:24 recital ^[1] - 204:19 recollection ^[13] - 145:4, 152:20, 152:24, 153:5, 168:20, 172:7, 172:15, 178:8, 181:4, 182:6, 189:24, 190:1, 206:7 recommends ^[1] - 175:15 reconsider ^[2] - 155:11, 157:11 record ^[2] - 206:23, 209:18 recounting ^[1] - 205:23 redistricting ^[21] - 145:9, 145:13, 146:7, 148:10, 149:4, 149:16, 149:25, 152:18, 153:4, 153:8, 154:7, 155:5, 155:14, 156:21, 157:9, 158:19, 160:1, 183:24, 207:4, 207:11, 207:25 redraw ^[1] - 199:2 reduce ^[2] - 195:16, 196:12 reduced ^[1] - 209:17 refer ^[2] - 196:13, 204:9 reference ^[5] - 146:15, 152:21, 157:5, 174:6, 205:8 referenced ^[1] - 189:7 referring ^[2] - 198:24, 200:19 refresh ^[1] - 171:2 regard ^[4] - 155:5,</p>	<p>161:11, 170:22, 183:18 Registered ^[4] - 139:23, 142:9, 209:3, 210:8 REID ^[1] - 140:5 REINHART ^[1] - 143:6 related ^[2] - 177:10, 209:22 relates ^[1] - 206:11 relating ^[1] - 145:24 relationship ^[1] - 169:18 relationships ^[1] - 161:4 relative ^[1] - 209:25 Remember ^[1] - 190:6 remember ^[11] - 177:4, 178:9, 180:4, 180:8, 180:9, 186:16, 195:7, 201:10, 201:14, 207:14, 207:21 remind ^[1] - 144:19 reminded ^[1] - 144:15 repair ^[1] - 171:7 repeat ^[1] - 150:25 report ^[1] - 204:22 Reporter ^[4] - 139:23, 142:9, 209:4, 210:8 REPORTER ^[1] - 144:18 represent ^[3] - 162:8, 162:19, 203:17 representation ^[2] - 185:15, 193:21 representative ^[26] - 159:23, 160:7, 160:14, 164:9, 165:9, 168:3, 168:14, 168:23, 169:19, 170:6, 170:11, 172:1, 174:23, 175:2, 175:6, 180:15, 180:16, 185:11, 194:13, 198:11, 199:1, 200:5, 200:10, 204:3, 206:16 represents ^[1] - 185:12 republican ^[6] - 177:7, 177:9, 188:12, 188:15, 207:17, 207:23 republican's ^[1] - 157:1 republicans ^[13] -</p>	<p>157:10, 159:10, 173:5, 177:6, 177:18, 178:4, 182:1, 182:2, 195:17, 196:22, 199:7, 200:23, 201:7 request ^[4] - 150:24, 151:14, 151:19, 151:20 requested ^[1] - 147:15 requests ^[1] - 198:20 required ^[1] - 202:14 requires ^[2] - 146:18, 150:18 residents ^[6] - 176:8, 176:21, 179:19, 180:25, 181:17, 182:18 resources ^[12] - 154:14, 157:3, 157:4, 163:18, 165:18, 167:2, 167:5, 179:24, 186:25, 187:1, 192:3, 192:14 respect ^[3] - 160:5, 183:24, 196:11 respond ^[2] - 156:25, 189:9 response ^[2] - 172:10, 200:8 responsibility ^[1] - 156:19 responsive ^[1] - 202:17 retain ^[1] - 177:23 reveal ^[2] - 183:16, 188:1 review ^[1] - 205:14 revolved ^[1] - 181:5 RIBBLE ^[1] - 140:5 Rich ^[3] - 141:12, 141:14, 141:16 rich ^[12] - 155:21, 158:12, 167:19, 167:25, 168:1, 168:18, 168:21, 174:24, 174:25, 180:14, 201:18 RICHARD ^[2] - 139:6 RISSEEUW ^[1] - 139:7 RMD ^[1] - 140:12 Road ^[1] - 202:5 road ^[1] - 202:16 ROBERT ^[1] - 143:9 ROBSON ^[1] - 139:7 ROCHELLE ^[1] - 139:6 ROGERS ^[1] - 139:7 role ^[1] - 153:7</p>	<p>RON ^[1] - 139:4 RONALD ^[2] - 139:3, 139:10 room ^[3] - 144:8, 169:4, 170:9 rough ^[1] - 194:24 roughly ^[1] - 201:3 Roys ^[2] - 174:22, 174:23 Roys' ^[1] - 180:17 RPR ^[1] - 139:22 RSWG ^[1] - 141:10 ruled ^[1] - 192:24 rumor ^[1] - 166:16 rumors ^[2] - 166:13, 196:21 runner ^[2] - 202:5, 202:16 running ^[1] - 175:12 rush ^[1] - 166:16 RYAN ^[1] - 140:4</p>
<p>qualified ^[1] - 209:5 questions ^[2] - 145:5, 208:8 quick ^[1] - 177:25 quicker ^[1] - 202:24 quickly ^[3] - 166:14, 195:25, 197:24 quite ^[3] - 152:22, 154:20, 202:3</p>				
<p>R</p> <p>Racine ^[2] - 184:24, 185:2 RAMIREZ ^[1] - 140:9 Ramirez ^[3] - 141:17, 198:10, 200:8 RAMIRO ^[1] - 140:9 ran ^[1] - 177:25 re ^[2] - 162:9, 162:16 re-elected ^[2] - 162:9, 162:16 reach ^[1] - 157:10 reached ^[2] - 177:7,</p>				<p>S</p> <p>S.C ^[4] - 142:11, 142:19, 143:6, 209:9 SANCHEZ ^[1] - 139:7 SANCHEZ-BELL ^[1] - 139:7 SARAH ^[1] - 209:3 Sarah ^[2] - 139:22, 142:8 saw ^[2] - 179:15, 179:16 Schaber ^[1] - 174:21 schedule ^[1] - 144:9 SCHLIEPP ^[1] - 139:7 schooled ^[1] - 157:8 se ^[3] - 150:11, 198:16, 199:25 seal ^[1] - 210:4 SEAN ^[1] - 140:5 searching ^[1] - 189:6 second ^[1] - 208:4 secondly ^[1] - 169:19 section ^[1] - 196:24 secure ^[1] - 195:16 see ^[30] - 145:10, 146:22, 148:2, 149:19, 149:23, 150:11, 151:22, 153:25, 154:1, 157:11, 158:12, 158:22, 159:4, 161:16, 167:21, 175:11, 175:18, 176:9, 182:11, 183:5,</p>

<p>187:8, 189:25, 190:9, 192:7, 195:17, 197:2, 198:21, 200:13, 201:23, 203:3 seeing [3] - 146:3, 158:7, 198:7 seem [1] - 173:9 Seidel [3] - 175:1, 175:2, 175:6 Seidel's [1] - 180:15 Senate [5] - 141:18, 141:19, 141:20, 141:21, 198:21 senate [24] - 152:5, 159:1, 159:9, 159:11, 159:12, 159:13, 172:13, 175:12, 177:23, 178:1, 196:25, 197:6, 203:24, 204:11, 204:13, 204:20, 205:4, 205:17, 205:24, 206:2, 206:4, 206:8, 206:11, 206:15 Senator [10] - 158:21, 158:24, 159:12, 166:21, 172:13, 196:25, 197:4, 197:11, 197:14, 204:15 senator [1] - 185:1 send [1] - 203:10 sending [1] - 167:13 sense [13] - 147:6, 147:21, 147:24, 154:24, 164:11, 166:19, 181:9, 181:14, 187:18, 195:4, 195:21, 195:23, 200:2 SENSENBRENNER [1] - 140:4 sent [3] - 155:10, 201:20, 203:2 sentence [1] - 158:18 separated [1] - 185:9 server [2] - 202:21 service [1] - 202:4 session [7] - 150:7, 156:4, 156:8, 156:16, 157:16, 157:18, 163:9 sessions [2] - 156:11, 171:3 set [6] - 146:18, 150:17, 162:23, 163:15, 202:13, 210:3 seven [2] - 182:6, 186:16 shape [1] - 180:2</p>	<p>Sharon [3] - 167:19, 168:2, 168:3 SHEILA [1] - 139:4 shells [1] - 145:15 short [3] - 166:24, 188:5, 196:15 sides [1] - 159:10 significance [1] - 171:12 signing [1] - 209:20 similar [4] - 168:12, 197:1, 197:5, 205:19 sit [1] - 163:16 site [2] - 168:24, 169:3 sites [1] - 169:8 situation [1] - 152:7 skill [1] - 160:2 skilled [1] - 164:10 skip [1] - 190:5 slow [2] - 167:20, 168:16 software [3] - 153:9, 153:18, 157:24 someone [2] - 144:17, 149:10 sometimes [4] - 175:16, 180:19, 192:11, 202:22 somewhat [1] - 147:23 somewhere [2] - 166:7, 169:4 soon [2] - 182:9, 195:24 sorry [3] - 150:25, 181:12, 203:21 sort [18] - 150:7, 153:10, 155:16, 155:23, 156:9, 160:25, 170:12, 173:24, 173:25, 175:14, 180:11, 183:22, 184:5, 185:17, 187:14, 199:23, 199:24, 200:17 sought [2] - 170:16, 170:19 source [1] - 180:22 speaker [2] - 154:11, 155:10 speaking [3] - 145:20, 168:21, 201:3 speaks [1] - 189:19 special [1] - 156:8 specific [12] - 148:22, 148:25, 152:20, 152:24, 158:7, 163:7, 178:3,</p>	<p>178:10, 178:17, 182:15, 198:25, 199:2 specifically [40] - 153:2, 153:11, 153:14, 153:20, 155:5, 157:5, 157:20, 157:25, 160:17, 162:22, 163:5, 165:14, 167:11, 171:25, 173:21, 178:20, 179:16, 180:4, 180:9, 181:2, 182:1, 182:3, 183:12, 184:3, 186:4, 186:12, 186:14, 186:20, 187:2, 188:24, 199:8, 199:20, 200:2, 200:16, 201:10, 201:14, 202:19, 207:9, 207:12, 207:19 specifics [2] - 181:8, 181:13 speculate [5] - 179:4, 180:1, 184:2, 190:2, 201:9 speculated [1] - 189:15 speculation [4] - 176:25, 177:18, 177:24, 178:25 speed [2] - 202:22, 203:8 spend [1] - 194:20 spent [1] - 149:13 split [1] - 200:3 sponsor [1] - 206:20 ss [1] - 209:1 staff [26] - 152:18, 152:22, 153:3, 153:5, 155:13, 155:21, 156:11, 156:14, 156:21, 157:7, 157:15, 163:23, 168:1, 175:14, 179:20, 179:24, 179:25, 180:3, 180:5, 180:12, 180:19, 180:21, 202:13, 202:18 stand [2] - 161:22, 186:4 standard [1] - 194:16 standards [4] - 164:19, 164:25, 193:17, 193:18 stands [1] - 174:20 start [2] - 144:12, 158:9 started [1] - 177:22 Staskunas [3] -</p>	<p>198:11, 199:1, 199:10 Staskunas's [1] - 198:15 STATE [2] - 143:3, 209:1 State [5] - 142:10, 142:13, 209:5, 209:11, 210:7 state [1] - 185:1 statement [1] - 144:22 states [1] - 148:8 STATES [1] - 139:1 States [1] - 142:6 station [1] - 170:24 Steve [5] - 141:8, 141:10, 146:11, 147:15, 149:14 stick [1] - 195:13 still [5] - 144:16, 144:19, 152:3, 195:20, 196:3 stipulation [2] - 142:8, 209:7 story [1] - 164:9 strategize [1] - 184:19 strategy [21] - 183:3, 183:4, 183:7, 183:9, 183:10, 183:23, 184:1, 184:4, 184:6, 184:13, 184:18, 185:6, 185:16, 185:20, 186:7, 186:18, 186:22, 187:15, 187:19, 187:22, 188:20 street [2] - 161:10 Street [5] - 142:12, 142:20, 143:4, 143:7, 209:10 strength [2] - 193:3, 194:5 stretch [1] - 195:1 strong [1] - 177:9 subdivide [1] - 147:2 subpoena [1] - 202:14 subsequent [1] - 186:24 substance [2] - 191:4, 191:5 substantiate [1] - 181:15 substantively [1] - 206:3 Substitute [2] - 141:19, 141:21 substitute [7] - 203:25, 205:4,</p>	<p>205:19, 206:1, 206:4, 206:10, 206:14 success [1] - 191:12 sufficient [2] - 165:10, 187:1 suggest [2] - 186:11, 191:3 suggested [1] - 172:9 suggests [1] - 148:3 Suite [4] - 142:20, 142:23, 143:7, 143:15 support [3] - 157:9, 195:2, 199:7 supposed [9] - 156:18, 174:10, 174:14, 192:17, 193:19, 193:20, 193:22, 193:25 surprise [2] - 154:12, 173:21 surprised [5] - 157:14, 157:19, 171:12, 171:15, 204:21 surrounding [1] - 206:8 sworn [3] - 154:10, 156:6, 209:12 system [1] - 153:24</p>
T				
<p>table [1] - 174:12 TAMMY [1] - 139:10 teams [1] - 179:21 technical [1] - 200:25 telephone [1] - 142:24 template [14] - 145:12, 145:18, 145:22, 146:1, 146:4, 146:17, 147:12, 148:21, 149:15, 149:24, 150:3, 150:4, 150:8, 150:10 templates [6] - 145:8, 146:6, 148:9, 148:12, 150:16, 151:4 ten [1] - 154:25 ten-minute [1] - 154:25 term [2] - 204:6, 204:7 terms [11] - 146:1, 146:4, 153:6, 155:1, 170:13, 172:14, 183:9, 184:4, 184:19,</p>				

VIDEOTAPE DEPOSITION OF PETER W. BARCA (VOLUME II) 2/7/2012

187:15, 189:19 terrific ^[1] - 144:11 test ^[3] - 187:5, 191:1, 194:15 testify ^[1] - 209:13 testimony ^[3] - 154:17, 201:5, 209:19 tests ^[1] - 192:24 THE ^[2] - 144:18, 144:21 theirs ^[1] - 159:14 themselves ^[3] - 154:14, 157:2, 187:25 thereupon ^[1] - 209:15 they've ^[1] - 202:23 thinking ^[3] - 148:15, 148:24, 187:23 third ^[1] - 176:4 THOMAS ^[5] - 139:15, 139:16, 140:4, 140:14, 140:15 thoroughly ^[1] - 144:25 three ^[5] - 152:4, 164:14, 200:3, 204:24, 206:3 thrust ^[1] - 157:12 THYSSEN ^[1] - 139:8 Tim ^[1] - 180:16 timeline ^[6] - 155:1, 155:22, 166:4, 166:7, 173:1, 177:21 timing ^[1] - 203:12 TIMOTHY ^[2] - 139:16, 140:15 title ^[1] - 198:16 today ^[1] - 207:6 together ^[7] - 153:16, 162:4, 162:20, 173:4, 173:24, 179:21, 193:25 Tom ^[1] - 180:16 tomorrow ^[1] - 158:20 Tony ^[3] - 158:16, 158:18, 198:11 took ^[3] - 149:10, 156:3, 200:20 top ^[3] - 153:25, 180:8, 200:9 topic ^[3] - 168:11, 180:20, 184:20 touching ^[1] - 209:14 town ^[1] - 175:13 tract ^[1] - 194:22 train ^[1] - 153:22 trained ^[1] - 163:24 training ^[5] - 153:17,	156:11, 156:13, 156:16, 157:16 transcript ^[2] - 141:23, 141:24 transcription ^[1] - 209:18 transparent ^[3] - 161:18, 187:17, 187:18 transpired ^[2] - 181:7, 182:8 TRAVIS ^[1] - 139:8 true ^[5] - 144:22, 150:16, 159:16, 197:10, 209:18 truth ^[2] - 209:13 try ^[12] - 166:13, 166:20, 167:3, 170:20, 177:24, 183:18, 183:19, 184:11, 186:24, 190:2, 196:16, 199:22 trying ^[8] - 152:25, 160:4, 160:10, 161:8, 166:4, 177:20, 181:25, 189:6 turn ^[3] - 176:2, 178:1, 201:16 two ^[7] - 198:20, 198:23, 200:3, 204:5, 204:13, 205:21, 205:22 type ^[2] - 147:25, 197:9 typewriting ^[1] - 209:17 typical ^[1] - 188:9 typically ^[18] - 145:22, 146:8, 150:2, 150:5, 150:11, 151:9, 151:13, 151:20, 155:2, 156:14, 180:10, 187:12, 187:14, 188:4, 202:20, 203:7, 204:22, 207:13	191:20, 191:25, 192:5, 193:17, 195:3, 195:15, 196:5, 201:7 under ^[4] - 144:16, 144:20, 171:18, 203:9 understood ^[2] - 155:19, 186:23 uneasy ^[2] - 172:18, 172:24 unfavorable ^[3] - 160:16, 161:2, 161:14 unit ^[1] - 159:8 United ^[1] - 142:6 UNITED ^[1] - 139:1 units ^[1] - 197:18 unlimited ^[2] - 154:14, 157:2 up ^[24] - 150:23, 151:12, 153:25, 154:6, 155:3, 155:23, 157:5, 163:15, 165:15, 165:23, 165:24, 166:25, 171:19, 172:11, 173:6, 175:7, 175:20, 180:2, 184:8, 189:5, 191:9, 195:22, 202:13, 207:14 upset ^[1] - 193:7 useful ^[1] - 172:2 usual ^[1] - 167:20 utilize ^[2] - 150:7, 171:14 utilized ^[1] - 147:3	VOCKE ^[2] - 139:16, 140:15 volition ^[2] - 151:3, 151:8 VOLUME ^[2] - 139:18, 142:1 vote ^[1] - 194:9 voted ^[3] - 191:17, 191:18 voting ^[3] - 193:1, 193:3, 194:4	139:1, 143:3, 209:1 wishes ^[1] - 170:13 wit ^[1] - 209:12 WITNESS ^[1] - 144:21 witness ^[3] - 142:2, 209:19, 210:3 Witness ^[8] - 141:2, 152:16, 158:6, 167:10, 173:16, 198:5, 203:20, 205:16 worded ^[1] - 190:4 works ^[2] - 157:18, 168:3 workstation ^[4] - 159:18, 160:6, 164:4, 172:24 workstations ^[1] - 158:21 worried ^[4] - 160:15, 162:19, 166:15, 172:22 write ^[1] - 164:23 writing ^[1] - 164:21
			W	
			wages ^[1] - 175:23 wait ^[5] - 172:19, 181:11, 183:12, 189:18, 197:16 waived ^[1] - 209:20 walking ^[1] - 154:24 WARA ^[1] - 140:9 ward ^[17] - 146:19, 146:22, 147:2, 147:3, 147:5, 147:10, 147:23, 147:25, 148:5, 148:17, 150:19, 150:21, 151:16, 171:21, 183:20, 195:9 wards ^[2] - 147:20, 147:21 Water ^[1] - 143:7 ways ^[1] - 191:20 week ^[3] - 156:4, 175:18, 182:14 weekend ^[1] - 182:13 weeks ^[2] - 152:4, 157:13 West ^[7] - 143:4, 199:18, 199:20, 199:21, 199:23, 200:3, 200:7 wherein ^[1] - 142:3 whereof ^[1] - 210:3 whole ^[2] - 147:25, 171:5 WI ^[1] - 143:15 widely ^[1] - 192:21 wind ^[1] - 176:23 Wisconsin ^[18] - 139:13, 139:21, 140:1, 140:12, 140:16, 142:4, 142:7, 142:10, 142:13, 142:20, 142:23, 143:4, 143:7, 143:11, 207:3, 209:6, 209:11, 210:7 WISCONSIN ^[3] -	
			V	
			VAN ^[1] - 143:6 VARA ^[1] - 140:9 various ^[5] - 148:11, 151:10, 153:15, 164:8, 165:19 VERA ^[1] - 139:4 versus ^[2] - 147:24, 150:8 vest ^[1] - 187:15 vetoed ^[1] - 207:19 vicinity ^[1] - 185:8 Video ^[1] - 143:14 VIDEOTAPE ^[2] - 139:19, 142:1 viewpoints ^[1] - 172:8 violate ^[1] - 188:19 violates ^[1] - 188:16 virtually ^[4] - 153:23, 167:4, 188:11, 188:13 VOCES ^[1] - 140:8 Voces ^[1] - 142:24	
			U	
			ultimately ^[1] - 148:4 unable ^[2] - 170:17, 170:21 unconstitutional ^[20] - 176:7, 176:19, 178:5, 178:19, 178:24, 179:11, 179:18, 180:23, 181:5, 181:16, 182:17, 191:11,	
			11	